

CHAPTER NO. 947

HOUSE BILL NO. 3004

**By Representatives Eckles, Wally, Hood, Maddox, Lois DeBerry, Caldwell, Brenda Turner, Black, Montgomery, David Davis, Pruitt, Arriola, Ferguson, Hargett, Sherry Jones, Odom, Armstrong, Hargrove, Kisber, Lewis, Godsey, Langster, Pleasant, Walker, Cooper and Mr. Speaker Naifeh**

**Substituted for: Senate Bill No. 3076**

**By Senators Person, Burks, Kurita, Kyle, Henry, Blackburn**

AN ACT relative to persons with mental illness, serious emotional disturbance, mental retardation, and developmental disabilities and providing for rights, duties, powers, liabilities, and related provisions, and specifically amending Tennessee Code Annotated Titles 4, 33, and 37, and others that cite Title 33.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, is amended by deleting it in its entirety and substituting instead the following:

**CHAPTER 1**

**GENERAL PROVISIONS**

Part 1

Definitions

33-1-101 [Similar to some subsections in current 33-1-101]

As used in this title, unless the context otherwise requires:

(1) "Alcohol abuse" means a condition characterized by the continuous or episodic use of alcohol resulting in social impairment, vocational impairment, psychological dependence or pathological patterns of use;

(2) "Alcohol dependence" means alcohol abuse which results in the development of tolerance or manifestations of alcohol abstinence syndrome upon cessation of use;

(3) "Chief officer" means the person with overall authority for a public or private hospital, developmental center, treatment resource, or developmental disabilities service or facility, or the person's designee;

(4) "Child" means a person who is under the age of eighteen (18) years;

(5) "Commissioner" means the Commissioner of Mental Health and Developmental Disabilities;

(6) "Community mental health center" means an entity that:

(A) Provides outpatient services, including specialized outpatient services for persons of all ages with a serious mental illness, and persons who have been discharged from inpatient treatment at a hospital or treatment resource;

(B) Provides twenty-four (24) hour a day emergency care services;

(C) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services;

(D) Provides screening for persons being considered for admission to state mental health facilities to determine the appropriateness of such admission; and

(E) Has community participation in its planning, policy development, and evaluation of services;

and includes for profit corporations and private entities qualified as tax exempt organizations under Internal Revenue Code Section 501(c)(3) or public entities created by private act of the General Assembly that, prior to July 1, 1992, were approved providers in Tennessee under the Medicaid Clinic Option and grantees of the department and the successor or surviving corporation of any such entity that underwent a corporate name change or corporate restructuring after July 1, 1992;

(7) "Consent" means voluntary agreement to what is reasonably well understood regardless of how such agreement is expressed;

(8) "Department" means the Department of Mental Health and Developmental Disabilities;

(9) "Developmental center" means a Department of Mental Health and Developmental Disabilities Facility or part of it that provides residential and habilitation services to persons with developmental disabilities;

(10) "Developmental disability" means a condition based on having either a severe chronic disability or mental retardation;

(11) "Drug abuse" means a condition characterized by the continuous or episodic use of a drug or drugs resulting in social impairment, vocational impairment, psychological dependence or pathological patterns of use;

(12) "Drug dependence" means drug abuse which results in the development of tolerance or manifestations of drug abstinence syndrome upon cessation of use;

(13) "Hospital" means a public or private hospital or facility or part of a hospital or facility equipped to provide inpatient care and treatment for persons with mental illness or serious emotional disturbance;

(14) "Indigent person" means a person with mental illness, serious emotional disturbance, or developmental disabilities whose property or estate is insufficient to pay any part of the person's maintenance in a state facility for persons with mental illness, serious emotional disturbance, or developmental disabilities and who does not have any responsible relatives able to pay for any part of the maintenance;

(15) "Licensed physician" means a graduate of an accredited medical school authorized to confer upon graduates the degree of Doctor of Medicine (M.D.) who is duly licensed in Tennessee, or an osteopathic physician who is a graduate of a recognized osteopathic college authorized to confer the degree of Doctor of Osteopathy (D.O.) and who is licensed to practice osteopathic medicine in Tennessee;

(16) "Mental illness" means a psychiatric disorder, alcohol dependence, or drug dependence, but does not include mental retardation or other developmental disabilities;

(17) "Mental retardation" means substantial limitations in functioning

(A) As shown by significantly sub-average intellectual functioning that exists concurrently with related limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work, and

(B) That are manifested before age eighteen.

"Mental retardation" also means, until March 1, 2002, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior that are manifested during the developmental period;

(18) "Qualified mental health professional" means a person who is licensed in Tennessee, if required for the profession, and is a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner; social worker who is certified with two years of mental health experience or licensed; marital and family therapist; masters degreed nurse who functions as a psychiatric nurse; professional counselors; or if the person is providing service to service recipients who are children, any of the above educational credentials plus two years of full time mental health experience with children;

(19) "Responsible relative" means the parent of an unemancipated child with mental illness, serious emotional disturbance, alcohol dependence, drug dependence, or developmental disabilities who is receiving service in programs of the department or any relative who accepts financial responsibility for the care and service of a service recipient;

(20) "Serious emotional disturbance" means a condition in a child who currently or at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria, that results in functional impairment which substantially interferes with or limits the child's role or functioning in family, school, or community activities and includes any mental disorder, regardless of whether it is of biological etiology;

(21) "Service recipient" means a person who is receiving service, has applied for service, or for whom someone has applied for or proposed service because the person has mental illness, serious emotional disturbance, or a developmental disability;

(22) "Severe, chronic disability" in a person over five years of age means a condition that:

(A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) Is manifested before age twenty-two (22);

(C) Is likely to continue indefinitely;

(D) Results in substantial functional limitations in three or more of the following major life activities:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency; and

(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is likely to continue indefinitely and to need to be individually planned and coordinated.

"Severe, chronic disability" in a person up to five years of age means a condition of substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disability as defined for persons over five years of age if services and supports are not provided;

(23) "Support" means any activity or resource that enables a service recipient to participate in a service for mental illness, serious emotional disturbance, or developmental disabilities or in community life; and

(24) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

## Part 2

## Policies, Values, and Principles

## 33-1-201 [NEW]

The Department of Mental Health and Developmental Disabilities serves as the state's mental health and developmental disabilities authority and is responsible for system planning, setting policy and quality standards, system monitoring and evaluation, disseminating public information and advocacy for persons of all ages who have mental illness, serious emotional disturbance, or developmental disabilities. It is the policy of the state to plan on the basis of and to promote the use of private and public service providers, without regard for funding source, to achieve outcomes and accomplishments that create opportunities for service recipients and potential service recipients to have the greatest possible control of their lives in the least restrictive environment that is appropriate for each person. The department shall plan for and promote the availability of a comprehensive array of high quality prevention, early intervention, treatment, and habilitation services and supports based on the needs and choices of service recipients and families served. The department shall include service recipients and members of service recipients' families in planning, developing, and monitoring the service systems.

## 33-1-202 [NEW]

Values upon which the law is predicated include, but are not limited to, individual rights, promotion of self-determination, respect, optimal health and safety, service recipient inclusion in the community, and service recipient life and service in typical community settings.

## 33-1-203 [NEW]

The following service principles are fundamental to carrying out the department's responsibilities:

- (1) Stable service systems which provide flexibility, advocacy, effective communication, targeted outcomes, continuous evaluation, and improvement based on best practice and research;
- (2) Early identification of needs and the inclusion of both prevention and early intervention services and supports;
- (3) Timely response to the needs, rights and desires of those served;
- (4) Treating service recipients and families with dignity and respect;
- (5) Protection of service recipients from abuse, neglect, and exploitation;
- (6) Accurate and responsible accountability for the use of public resources;
- (7) Ongoing education and skills development of the workforce; and
- (8) Cultural competence of persons providing service.

## 33-1-204 [NEW]

The provisions of this title shall not create entitlement to services and supports from the state except to the extent that services and supports are necessarily attached to deprivation of liberty by placement in facilities operated by the department. Implementation of any service or support at state expense under this title is subject to the availability of funds appropriated for that purpose in the General Appropriations Act.

## Part 3

## Department General Powers and Duties

## 33-1-301 [Derived from current § 33-1-201]

(a) The department is empowered to enter into contractual agreements in furtherance of its functions.

(b) The department may accept grants and gifts of funds and other property of whatever kind from any source, administer the same according to the terms of the grants or gifts, and enter cooperative programs with private and public instrumentalities, including the federal government, to improve mental health and developmental disabilities services and supports in the state.

(c) The department may enter into contracts with other states, or political subdivisions, or corporations chartered in other states, for the purpose of providing preventive and treatment services and supports for service recipients by establishing or supporting various facilities in cooperation with such political or corporate bodies.

(d) The department may establish or review pilot projects, including without limitation, projects to provide, develop, or plan service and support for its service recipients or their families through direct administration or through contracting with service providers. Pilot projects are subject to other state and federal laws.

(e) The Department of Finance and Administration shall furnish to the Department of Mental Health and Developmental Disabilities sufficient space for the department to carry out the department's duties efficiently.

## Tenn. Code Ann § 33-1-302 [Current § 33-1-202]

(a) The department may:

(1) Make grants and contracts under terms and conditions that the commissioner prescribes to any county, city, or profit or nonprofit corporation or any combination of them for the construction, maintenance or operation of facilities, programs, or an array of high quality prevention, early intervention, treatment, and habilitation services and supports for service recipients and their families;

(2) Enter into cooperative programs for the construction, maintenance or operation of facilities, programs or services to provide care, habilitation and treatment for service recipients;

(3) Make and enforce rules that are necessary for the efficient financial management and lawful operation of such facilities, programs or services;

(4) Construct, maintain and operate such facilities, programs or services; and

(5) With the approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury, establish or cause to be established revolving loan fund programs to assist recipients of publicly funded services under Title 33 to acquire or maintain affordable housing.

(b) (1) Each governing body of such facility, program, or service shall have an annual audit made of its accounts and records. The Comptroller of the Treasury, through the Department of Audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards and determining if the audits meet minimum audit standards which shall be prescribed by the Comptroller. No audit may be accepted as meeting the requirements of this subsection until the audit has been approved by the Comptroller. The audits may be prepared by the Department of Audit, or with the prior written approval of the Comptroller, by a licensed independent public accountant.

(2) All audits performed by the internal audit staff of any such facility, program, or service shall be conducted in conformity with the standards established by the Comptroller of the Treasury under § 4-3-304(9).

33-1-303 [Derived from current §§ 33-1-203 and 33-1-303]

The commissioner may:

(1) Select and recommend to the appropriate state officials the employment of the chief officers of all facilities of the department, all central office personnel, and all professional, technical and other personnel required for the operation of the department;

(2) Recommend to the appropriate state officials the salaries and compensation of all officers and employees of the department;

(3) Adopt rules and policies for the governance, management, and supervision of the department's facilities; prescribe the powers and duties of officers and employees; and provide for admission, discharge, treatment, habilitation, and support of persons with mental illness, serious emotional disturbance, or developmental disabilities;

(4) Publish a report on the operation of the department and the facilities and programs under its supervision and the department's three (3) year plan; furnish the report and plan to the Governor and members of the General Assembly; and further distribute them as the commissioner, with the approval of the Governor, may consider proper;

(5) Publish compilations of Title 33 and other relevant statutes to improve public knowledge of the laws by compiling them separately for services to children and adults and mental health and developmental disabilities service recipients and make the compilations available in print and on the Internet;

(6) Prescribe and distribute the forms to be used in connection with the admission, hospitalization or release of service recipients in the department's facilities;

(7) Alter the department's facilities and grounds and name them;

(8) Order the transfer of service recipients between state facilities;

(9) Procure insurance to indemnify full or part time physicians, licensed psychologists designated as health service providers, and non-physician chief officers of all facilities of the department against actions by service recipients and others that are alleged to arise out of acts of omission or commission of those personnel;

(10) Delegate responsibilities as the commissioner deems necessary for the effective conduct of the functions of the department; and

(11) Assume general responsibility for the proper and efficient operation of the department, its facilities, services and supports.

#### 33-1-304 [NEW]

The commissioner shall:

(1) Based on best practice and research, assess the needs of service recipients and potential service recipients throughout the state, plan for a system to meet such needs, set standards for services and supports for service recipients, promote the development of services and supports for service recipients in a community-based, family-oriented system, perform the department's duties, and achieve the department's goals;

(2) Collaborate with all relevant state agencies to coordinate the administration of state programs and policies that directly affect service recipients with respect to treatment, habilitation and education; and

(3) Advise the Governor, General Assembly, state, local, and private agencies, and the public in matters affecting service recipients, and advocate meeting their needs.

#### 33-1-305 [Derived from current § 33-1-205(b)]

The commissioner may:

(1) Adopt rules necessary to fulfill the department's responsibilities;

(2) Prescribe the form of applications, records, reports and certificates provided for in this title and the information that forms shall contain;

(3) Investigate complaints by a service recipient or anyone on behalf of a service recipient.

#### 33-1-306 [Current § 33-1-206]



The commissioner may designate employees as administrative law judges or hearing officers to conduct contested case hearings when cases are required to be held under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, for admission review hearings for admission to department facilities.

33-1-307 [NEW]

The department shall establish a structured information system to gather all data necessary to carry out its duties with respect to planning, needs assessment, standard setting, evaluation, and promotion of the development of services and supports for the service recipient population, including persons who may become service recipients. The department shall design the system to avoid duplication of information gathering by other public agencies and to minimize acquisition of personally identifiable service recipient information. All public and private providers who serve persons with mental illness, serious emotional disturbance, or developmental disabilities, regardless of whether the provider is licensed under Title 33 or other titles of the code or is unlicensed, shall provide the information required for the information system in a way consistent with this title and other laws.

33-1-308 [NEW]

(a) The commissioner shall initiate the development of and enter into interagency agreements on services and supports for children, adults, and the elderly to:

- (1) Assure accountability for services and supports across all agencies providing services and supports for a person or family whose service is covered by Title 33;
- (2) Clarify responsibilities for the department's service system;
- (3) Promote problem resolution at the local levels;
- (4) Promote interagency service needs assessment and planning;
- (5) Provide a vehicle for interagency policy development without interfering with agency independence;
- (6) Promote creation and maintenance of coordinated service systems for service recipients and families;
- (7) Provide for interrelated service planning across agency lines;
- (8) Promote inclusion of mental health and developmental disabilities issues in crisis and disaster planning; and
- (9) Enhance the efficiency and effectiveness of expenditure of public funds.

All state agencies shall cooperate with the department in the development of such agreements.

(b) The agreements shall include, without limitation: the intersection of services and supports among all state agencies that have any responsibility for mental health, developmental disabilities, alcohol dependence, drug dependence, education, health, social services, housing, transportation, employment, justice, habilitation, rehabilitation, correction, or public funding of

services and supports; transition between services to different age groups; information sharing, including records, data, and service; and interagency training.

(c) Interagency agreements should include at least the following elements:

- (1) Goals and the expected outcomes against which progress will be measured;
- (2) Eligible populations;
- (3) Role responsibilities;
- (4) Covered services and supports;
- (5) Procedures for coordination, including local level implementation procedures;
- (6) Joint monitoring;
- (7) Data sharing; and
- (8) How conflict resolution will be achieved.

(d) The commissioner may initiate the development of and enter into similar interagency agreements with local government agencies.

33-1-309 [NEW]

The department shall adopt all rules in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

33-1-310 [NEW]

If the department determines that an emergency substantially impairs a service provider agency's capacity to provide service to its service recipients and jeopardizes the health or safety of its service recipients, the department may assume temporary operating responsibility for the agency to assure continuity of care and the health and safety of the service recipients.

#### Part 4

#### Statewide Planning and Policy Council

33-1-401 [NEW]

(a) There is created the statewide planning and policy council for the department to assist in planning a comprehensive array of high quality prevention, early intervention, treatment, and habilitation services and supports and to advise the department on policy, budget requests, and developing and evaluating services and supports.

(b) (1) The statewide planning and policy council shall be composed of not less than seventeen (17) members, not including *ex officio* members. The Governor shall appoint the chair of the council. The Speaker of the Senate and the Speaker of the House of Representatives shall each appoint one legislator as a member of the council. The

commissioner shall serve, *ex officio*, as secretary to the council and, if the chair is not present at a meeting, shall designate a member to serve as chair for the meeting. The Governor is *ex officio* a member of the council and may appoint representatives of state agencies as *ex officio* members of the council.

(2) The commissioner shall appoint five (5) present or immediate past members of the mental health and five (5) present or immediate past members of the developmental disabilities planning and policy councils created under Chapter 2, Part 2 to the statewide planning and policy council. Of the members from each service area two (2) shall be service recipients or members of families of service recipients, one (1) shall be a representative for children, one (1) shall be a service provider, and one (1) shall represent others affected by the service area. The commissioner shall appoint one (1) representative for elderly service recipients and at least three at-large representatives.

(3) At least a majority of the council's membership shall consist of current or former service recipients and members of service recipient families.

(c) The members of the statewide planning and policy council shall receive no compensation but shall receive their actual traveling expenses for attendance at meetings of the council. All reimbursement for travel expenses shall be in conformity with the comprehensive travel rules.

(d) The statewide planning and policy council shall meet quarterly at a place designated by the chair and may meet more often upon the call of the chair or a majority of the members.

(e) Terms on the council shall be three years except that the chair and members appointed by the Speakers shall have terms of two years. The commissioner shall designate four (4) of the initial members to serve full terms, three (3) to serve two (2) years, and three (3) to serve one (1) year. Subsequent appointments shall be made for full terms except that vacancies shall be filled by appointment for the unexpired term only.

(f) The appointing authority may remove a member for failure to attend at least one half (1/2) of the scheduled meetings in any one (1) year period or for other good cause.

#### 33-1-402 [NEW]

(a) The statewide planning and policy council shall advise the commissioner as to plans and policies to be followed in the service system and the operation of the department's programs and facilities, recommend to the General Assembly legislation and appropriations for such programs and facilities, advocate for and publicize the recommendations, and publicize generally the situation and needs of persons with mental illness, serious emotional disturbance, or developmental disabilities and their families.

(b) The statewide planning and policy council shall especially attend to:

(1) Identification of common areas of concern to be addressed by the service areas;

(2) The needs of service recipients who are children or elderly and of service recipients with combinations of mental illness, serious emotional disturbance, developmental disabilities, or alcohol or drug abuse or dependence;

- (3) Evaluation of needs assessment, service, and budget proposals;
- (4) Reconciliation of policy issues among the service areas; and
- (5) Annual review of the adequacy of Title 33 to support the service systems.

(c) The statewide planning and policy council, in conjunction with the commissioner, shall report annually to the Governor on the service system, including the department's programs, services, supports, and facilities, and may furnish copies of such reports to the General Assembly with recommendations for legislation. The statewide planning and policy council may make other reports to the Governor and to the General Assembly as the council deems necessary. The commissioner shall make the reports available to the public, including on the internet and by other appropriate methods.

## **CHAPTER 2**

### **SERVICES AND FACILITIES**

#### **Part 1**

#### **Community Service System**

##### **33-2-101 [NEW]**

The department shall plan, coordinate, administer, monitor, and evaluate state and federally funded services and supports as a community-based system within the total system of services and supports for persons with mental illness, serious emotional disturbance, developmental disabilities, or at risk for such conditions and for their families. All functions shall be carried out in consultation and collaboration with current or former service recipients, their families, guardians or conservators, service recipient advocates, service providers, agencies, and other affected persons and organizations.

##### **33-2-102 [NEW]**

(a) Within the limits of available resources, it is the goal of the state to develop and maintain a system of care that provides a comprehensive array of quality prevention, early intervention, treatment, habilitation and rehabilitation services and supports which are geographically available, equitably and efficiently allocated statewide, allowing people to be in their own communities in settings, based on the needs and choices of individuals and families served.

(b) The state's purposes are to:

(1) Establish and sustain a broad range and scope of flexible services and supports across the domains of residential living, working, learning, community participation, and family support including crisis, respite and other emergency services, which help service recipients maintain respected and active positions in the community, and

(2) Promote the early identification of children with mental illness, serious emotional disturbance, developmental disabilities, and developmental delay to assure that they receive services and supports appropriate to their developmental level and changing needs.

(c) The General Assembly finds as facts that the needs of persons with mental illness, serious emotional disturbance, and developmental disabilities cannot be met by the department in isolation and that such persons need to receive services and supports that are integrated, have linkages between and among other human service agencies and programs, and have mechanisms for planning, developing, coordinating, and monitoring services and supports to meet their needs.

### 33-2-103 [NEW]

The state will accomplish its purposes through community-based systems that provide:

- (1) Access to services and supports which are individualized to the capacities, needs and values of each person;
- (2) Accountability of services and supports through statewide standards for monitoring, reporting, and evaluating information;
- (3) At least basic quality standards for service delivery;
- (4) Priorities for the use of available resources;
- (5) Coordination of services and supports within the department, among other state agencies, and other public and private service providers aimed at reducing duplication in service delivery and promoting complementary services and supports among all relevant entities;
- (6) Conflict resolution procedures; and
- (7) Extensive involvement of service recipients, families, and advocates.

### 33-2-104 [NEW]

The core values of the service system shall include:

- (1) The system of care is person-centered and family-focused, with the needs and choices of the individual and family, as appropriate, determining the types and mix of services and supports provided because, to make good decisions, service recipients and their families need complete information about the availability, alternatives, and costs of services and supports, how the decision-making process works, and how to participate in that process;
- (2) The system of care provides individualized services and supports based on an individualized service plan that is comprehensive, coordinated, age appropriate, provides smooth transition through life stages, involves families as appropriate, and is developed by qualified professionals in consultation with service recipients and family members as appropriate;

(3) The system of care is community-based and provides for service in the least restrictive, most appropriate setting;

(4) The system of care is culturally competent with agencies, programs, services, and supports that are responsive to the cultural, racial, and ethnic differences of the populations they serve;

(5) The system of care takes into account the safety and health of service recipients, while respecting their choices and protecting their rights, including their right to be free from abuse, neglect, and exploitation; and

(6) The system of care is continuously improved based on research and best practices.

33-2-105 [NEW]

The department shall establish areas for planning and resource allocation. The department shall define geographically dispersed and accessible points of access to service systems and designate providers or mechanisms to provide information and referral for services and supports and for eligibility decisions.

## Part 2

### Service System Assessment and Planning

33-2-201 [NEW]

(a) The department, on the basis of the statewide planning and policy council's recommendations, shall prepare and maintain on a continuing basis a three year plan for all mental health and developmental disabilities services and supports for the state, including services and supports provided or funded by private service providers of all kinds. The department shall revise the plan annually on the basis of its assessment of the public's need for mental health and developmental disabilities services and supports.

(b) The department shall base its annual budget request to the Governor on that part of the three year plan that the department proposes to be implemented with public funds during the budget year. The department shall report all service objectives and outcomes annually as a part of its three year plan on which the budget is based.

33-2-202 [NEW]

The department shall establish a state developmental disabilities planning and policy council, a state mental health planning and policy council, and regional citizen-based planning and policy councils composed of service recipients, family members of service recipients, service recipient advocates for children, adults, and the elderly, service providers, and other affected persons and organizations for the department's service areas. The councils shall:

(1) Advise the statewide planning and policy council on the three year plan, including the desirable array of prevention, early intervention, treatment, and habilitation

services and supports for service recipients and their families, and such other matters as the commissioner or the statewide planning and policy council may request, and

(2) Provide information and advice to the department on policy, formulation of budget requests, and development and evaluation of services and supports.

#### 33-2-203 [NEW]

The councils are to provide citizen participation in policy planning and shall be representative of service recipients and their families, service recipient advocates for children, adults, and the elderly, service providers, agencies, and other affected persons and organizations. At least a majority of each council's membership shall consist of current or former service recipients and members of service recipient families.

### Part 3

#### Setting Service Standards

#### 33-2-301 [NEW]

(a) The department shall set basic quality standards for services and supports to all persons served on the basis of mental illness, serious emotional disturbance, or developmental disabilities regardless of whether they are served by the department, the department's contractors, private service providers, other state or local public agencies, agencies licensed by the department, or private service providers that are not licensed under Title 33 and regardless of whether the service recipients are in the custody of state or local government.

(b) Basic quality standards shall be the same for all service recipients regardless of where they are served and by whom they are served. Basic quality standards may vary according to the ages of the service recipients to assure appropriate service for children, adults, and the elderly.

#### 33-2-302 [NEW]

The department shall regulate compliance with basic quality standards to the extent otherwise authorized by Title 33. The department may monitor compliance with basic quality standards in all settings, including those over which it does not have regulatory authority. The department may monitor by inspections conducted by other state agencies as part of their regular duties.

#### 33-2-303 [NEW]

The department may contract for higher performance standards than the basic quality standards or licensure standards.

### Part 4

#### Licensing of Services and Facilities

#### 33-2-401 [Similar to current § 33-2-501]

This part may be cited as the "mental health and developmental disabilities licensure law."

33-2-402 [Derived from current § 33-2-502]

As used in this part, unless the context otherwise requires:

(1) "Facility" means a developmental center, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, halfway house, or any other entity that provides a mental health or developmental disabilities service;

(2) "Licensee" means a proprietorship, a partnership, an association, a governmental agency, or corporation, that operates a facility or a service and has obtained a license under this part;

(3) "Reputable and responsible character" means that the applicant or licensee can be trusted with responsibility for persons who are particularly vulnerable to abuse, neglect, and financial or sexual exploitation; and

(4) "Service" includes any activity to prevent, treat, or ameliorate mental illness, serious emotional disturbance, or developmental disabilities, and includes diagnosis, evaluation, residential assistance, training, habilitation, rehabilitation, counseling, case coordination, or supervision of persons with mental illness, serious emotional disturbance, or developmental disabilities.

33-2-403 [Derived from current §§ 33-2-503, 33-2-502, and 33-2-512.]

(a) The department has the authority to license services and facilities operated for the provision of mental health and developmental disabilities services. Notwithstanding any references in this part to the licensing of "facilities" or "services," only proprietorships, partnerships, associations, governmental agencies, or corporations may be listed on license applications or licenses as the licensed entity.

(b) The following are exempt from licensing under this part:

(1) Private practitioners who are both (1) authorized to practice by the Boards of Healing Arts and (2) only in private practice in that capacity;

(2) A person providing personal care to only one (1) person with mental illness, serious emotional disturbance, or developmental disabilities;

(3) A person providing service or support only to members of the person's own family or relatives;

(4) A person providing service or support that is not subject to licensing under any other title of the code and doing so only on a part-time basis as defined in department rules;

(5) Foster homes which accept placements only from agencies of state government or licensed child-placing agencies;



- (6) Services or facilities providing employee assistance programs;
- (7) Services or facilities providing only employment placement;
- (8) Facilities that are appropriately licensed by the Department of Health as a:

- (A) Hospital whose primary purpose is not the provision of mental health or developmental disabilities services; or

- (B) Satellite hospital, as defined by rules of the Department of Health, whose primary purpose is the provision of mental health or developmental disabilities services, and which the Department of Mental Health and Developmental Disabilities verifies to the Department of Health as satisfying standards under this chapter.

- (9) Facilities that are operated by the Department of Education, the Department of Correction, the Department of Human Services, or the Department of Children's Services and that affirmatively state that the primary purpose of the facility is other than the provision of mental health or developmental disabilities service.

- (c) A service or facility that can demonstrate compliance with rules and standards by previously acquired license from another state agency is considered in compliance with rules and standards under this part to the extent that duplicate inspection and enforcement is necessary.

- (d) (1) The department shall appoint a review panel to review periodically all exclusions and waivers granted under the licensure law and perform other duties under this part. The department's legal counsel shall advise the panel.

- (2) The panel's membership is:

- (A) The commissioner or the commissioner's designee;

- (B) A representative of licensed community mental health services;

- (C) A representative of licensed developmental disability community services;

- (D) A representative of a licensed residential facility for persons with mental illness or serious emotional disturbance;

- (E) A representative of a licensed residential facility for persons with developmental disabilities; and

- (F) Four (4) service recipient representatives.

- (3) The panel shall elect a chair and vice-chair and shall report any findings directly to the commissioner.

- (4) The vote of a majority binds the panel.

(5) Travel expenses for panel members shall be reimbursed. All reimbursement for travel expenses shall be in conformity with the comprehensive travel rules.

33-2-404 [Derived from current § 33-2-504]

The department shall adopt rules for licensure of services and facilities regarding adequacy of services, qualifications of professional staff, and facility conditions. The department shall require for licensure satisfaction of basic quality standards set under Chapter 2, Part 3 and may require higher standards. The rules shall include consideration of the adequacy of environment, life safety, treatment or habilitation services, educational and training requirements of the staff, and other considerations that the department deems necessary to determine the adequacy of the provision of mental health and developmental disabilities services. The department may adopt rules for the administration of the licensure program.

33-2-405 [Current § 33-2-505]

(a) It is unlawful for a person, partnership, association or corporation to own or operate a service or facility that provides mental health or developmental disability service within the meaning of this title without having obtained a license as required by this part.

(b) A violation of this requirement is a Class B misdemeanor.

(c) Each day of operation without a license constitutes a separate offense.

33-2-406 [Derived from current § 33-2-506 and 33-2-502]

(a) To lawfully establish, conduct, operate, or maintain a service or facility which provides mental health or developmental disability services, a person, partnership, association, corporation, or any state, county or local governmental unit or any division, department, board or agency of government shall obtain a license from the department.

(b) The applicant shall submit an application on the department's form showing that the applicant is of reputable and responsible character and able to comply with the minimum standards for a service or facility providing mental health or developmental disability service and with the rules adopted under this part. The application shall contain the following additional information: the name of the applicant, the type of facility or service, the location, the name of the person or persons to be in charge, and such other information as the department may require.

(c) The department may approve the issuance of a license upon the application without further evidence, or, in its discretion, it may conduct its own investigation.

(d) Proof that a person or business has a personal or business history in any jurisdiction of:

(1) Operation of substandard services or facilities or

(2) A felony conviction creates a presumption that the applicant or licensee does not have reputable and responsible character. An applicant denied a license on the basis of the presumption may request a hearing for the purpose of rebutting the presumption created by this subsection.

(e) A license shall not be issued or renewed if the applicant, or any chief executive officer or director of the applicant, does not have reputable and responsible character.

(f) If the department determines that a license should not be granted, it shall notify the applicant. Within fifteen (15) days of notification of denial, the applicant may file a written request for review by the panel appointed under § 33-2-403(d). The review shall be at the earliest possible date, and recommendations shall be reported to the commissioner. The commissioner shall determine whether the original license denial shall remain effective and shall notify the applicant. Within fifteen (15) days of notification, the applicant may file a written request for a hearing before the department. The hearing shall be conducted under Title 4, Chapter 5.

(g) If the department determines that the applicant complies with and will in the future comply with the provisions of this part and rules adopted under this title and has reputable and responsible character, the department shall issue a license.

(h) A license is valid for up to one (1) year from the date of issuance. A license shall not be assignable or transferable, shall be issued only for the premises or services named in the application, shall be posted in a conspicuous place in the service or facility, and may be renewed from year to year. The department may charge a reasonable fee for processing the application and issuance of licenses.

33-2-407 [Derived in part from current § 33-2-507]

(a) The department may suspend or revoke a license on the following grounds:

(1) Violation of Title 33 or rules adopted under Title 33;

(2) Permitting, aiding or abetting the commission of any illegal act during a licensed service or in a licensed facility; or

(3) Conduct or practice found by the department to be detrimental to the welfare of the service recipients of a licensed service or facility.

(b) The department may impose a civil penalty on a licensee for a violation of Title 33 or a department rule. Each day of a violation constitutes a separate violation. The department shall establish by rule a schedule designating the minimum and maximum civil penalties within the ranges set in § 33-2-408 that may be assessed under this part for violation of each statute and rule that is subject to violation. The department may exclude a statute or rule from the schedule if it determines that a civil penalty for violation of that statute or rule would not achieve the purposes of licensure. If the department has not adopted a rule designating the minimum and maximum civil penalty that may be assessed for violation of a statute or rule, the maximum civil penalty that may be imposed for violation of that statute or rule shall be the lowest figure set under the subsection of § 33-2-408 that applies to the violation.

(c)(1) The procedure governing the suspension or revocation of a license or imposition of a civil penalty shall be as prescribed in this subsection.

(2) A complaint shall be filed by the department stating facts constituting a ground or grounds for the proposed action.

(3) If the department determines that a license should be suspended or revoked, a civil penalty imposed, or both, it shall so notify the licensee. Within fifteen (15) days of notification, the licensee may file a written request for review by the panel appointed under § 33-2-403(d). The review shall be at the earliest possible date, and the panel shall report its recommendations to the commissioner. The commissioner shall determine whether the original action shall remain effective and shall notify the licensee. Within fifteen (15) days of notification, the licensee may file a written request for a hearing before the department. The hearing shall be conducted under Title 4, Chapter 5.

(4) The department may determine after the hearing that the license be suspended or revoked, that a civil penalty be imposed, or that no action be taken.

(5) If the department determines that a license should be suspended, the department may also set the conditions to be met by the licensee during the period of suspension to entitle the licensee to resume operation of the service or facility.

(6) If the department determines that a license should be suspended or revoked, a civil penalty should be imposed, or both, the department shall enter an order stating the grounds for such action.

(7) The department may, after a hearing, hold a case under consideration and specify requirements to be met by a licensee to avoid either suspension, revocation, or civil penalty. In such cases, the department shall enter an order accordingly and notify the licensee by certified mail. If the licensee complies with the order and proves that fact to the satisfaction of the department, the department shall enter an order showing satisfactory compliance and dismissing the case because of compliance.

(d) If a civil penalty lawfully imposed under this part is not paid, the penalty shall be recoverable in the name of the state by the Attorney General in the chancery court of Davidson County or by legal counsel for the department in the chancery court of the county in which all or part of the violation occurred.

33-2-408 [NEW; derived in part from current § 68-11-811]

(a) A civil penalty of not less than two hundred and fifty (250) dollars and not more than five hundred (500) dollars may be imposed on a licensee for a violation of a statute or rule.

(b) A civil penalty of not less than five hundred (500) and not more than five thousand (5,000) dollars may be imposed on a licensee for a second or subsequent violation of the same kind committed within twelve months of the first penalty being imposed.

33-2-409 [NEW; derived from current § 68-11-827.]

(a) The commissioner shall establish and maintain a service recipient protection trust fund, created by the deposit of all civil penalty moneys collected under the provisions of this part.

(b) The trust fund shall be maintained for the purpose of protecting the service recipients of a facility or service, whose noncompliance with the conditions of continued

licensure, applicable state and federal statutes, rules, or contractual standards threatens the service recipients' care or property or the facility's or service's continued operation.

(c) Notwithstanding any provision of law to the contrary, trust funds remaining unspent at the end of the fiscal year shall be carried over into the budget of the department for the subsequent fiscal year, and shall continue to be carried over from year to year until expended for the purposes prescribed in this section.

33-2-410 [Derived from TCA 68-11-812]

If a licensure surveyor finds a violation of a statute or rule that may be a ground for a civil penalty, the surveyor shall advise the licensee of the finding orally before concluding the survey.

33-2-411 [Derived from current § 33-2-508]

(a) The department may sue to enjoin any person, partnership, association or corporation from establishing, conducting, managing or operating any service or facility providing mental health or developmental disabilities services within the meaning of this part without having obtained a license or while its license has been suspended or revoked. Suit may be brought in the name of the State by the Attorney General in the chancery court of Davidson County or by legal counsel for the department in the chancery court of the county in which all or part of the violation occurred.

(b) In charging any defendant in a complaint for injunction, it shall be sufficient to charge that the defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a service or facility providing mental health or developmental disabilities services or that the defendant is about to do so without having a license, without averring any further or more particular facts concerning the case.

33-2-412 [Derived from current § 33-2-509]

(a) The department shall make at least one (1) unannounced life safety and environmental inspection of each licensed service or facility yearly. The department shall inspect for quality standards all licensees that contract with the department as part of its contract monitoring. The department shall inspect for quality standards all licensees that do not contract with the department. The department may deem a service or facility in compliance without inspection if the service or facility meets another government agency's certification or accreditation requirements provided for in rules of the department.

(b) With or without giving notice, the department may enter and inspect any applicant or licensee when a complaint is filed with the department against the applicant or licensee or when the department otherwise deems inspection in the interest of service recipients. Inspection may include review of physical plant, program, activities, and applicant or licensee records.

(c) The department may charge a fee for any service or facility inspection in an amount not to exceed fifty dollars (\$50.00).

(d) If the department finds noncompliance with life safety or food service standards relating to non-life threatening issues, the department shall refer the findings to the state or local agency responsible for life safety or food service inspection for re-inspection or review in

accordance with life safety or food service standards. The department will accept the state or local agency's determination.

(e) The department shall, to the extent practicable, coordinate life safety inspections to avoid duplication without good cause in the same calendar year by other government agencies that apply substantially the same standards.

33-2-413 [Derived from current § 33-2-510]

The department may provide assistance to applicants for a license under this part. The department shall provide assistance in placing service recipients who are adversely affected by denial, suspension, or revocation of a license under this part.

33-2-414 [Current § 33-2-511]

(a) The department may grant a provisional license for up to one (1) year to a service or facility if:

(1) The service or facility is making a diligent effort to comply with standards adopted under this part;

(2) The continued operation of the service or facility will not endanger the health or safety of its service recipients;

(3) The continued operation of the service or facility is necessary because care is not otherwise reasonably available for its service recipients;

(4) The service or facility has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected; and

(5) The service or facility has substantially met the commitments made in the preceding year's compliance plan, if any.

(b) Failure to meet the commitments made in the compliance plan is a ground for revocation or suspension of the license.

(c) Copies of provisional licenses and compliance plans shall be maintained in a central location and are open to public inspection.

33-2-415 [Derived from current § 33-2-512]

(a) The department shall investigate reports of serious abuse, dereliction or deficiency in the operation of a licensed service or facility.

(b) (1) A person making any report or investigation pursuant to this part, including representatives of the department in the reasonable performance of their duties and within the scope of their authority, shall be presumed to be acting in good faith and shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(2) Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from the report or investigation.

(3) Any person making a report under the provisions of this part shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes a detrimental change in the employment status of the reporting party by reason of the report.

(c) (1) The commissioner shall suspend or revoke the license of any service or facility if serious abuse, dereliction or deficiency is found and not corrected in a reasonable time.

(2) The commissioner, in the commissioner's discretion, may suspend enrollment in a service or facility pending resolution of the investigation or of proceedings to suspend, revoke, or deny the license, or until the service or facility corrects any serious abuse, dereliction, or deficiency found in the course of the investigation. The commissioner may suspend enrollment in a licensed service or facility based on probable cause to believe that serious abuse, dereliction, or deficiency in the operation of the licensed service or facility has occurred or would occur without suspension of enrollment. Suspension of enrollment shall not exceed a period of one hundred twenty (120) days except that, in the discretion of the commissioner, the period may be extended for an additional period not to exceed one hundred twenty (120) days. Nothing in this part takes away from the right of the department to issue an order of summary suspension of the license pursuant to § 4-5-320(c) and (d).

33-2-416 [Derived from current § 33-2-513]

(a) If the commissioner finds that a service or facility is providing mental health or developmental disabilities services without a license, the commissioner may, without prior notice, order the service or facility immediately to cease and desist from providing mental health or developmental disabilities services. Before issuing a cease and desist order, the commissioner shall find that entering the order is in the public interest; necessary for the protection of the health, safety, or welfare of the service recipients of the service or facility; and consistent with the purposes fairly intended by this part.

(b) The order shall state the relevant findings of fact and conclusions of law that support the commissioner's finding that entering the order without prior notice is in the public interest, necessary for the protection of the service recipients of the service or facility, and consistent with this part. The order shall provide notice to the respondent of the respondent's rights and responsibilities concerning review of the order.

(c) (1) The owner of the service or facility ordered to cease and desist operation may seek review of the order before the commissioner or the commissioner's designee under this subsection.

(2) The owner or legal representative of the service or facility may request an informal conference before the commissioner or the commissioner's designee. The request shall be filed with the commissioner within thirty (30) days of entry of the order. The commissioner or the commissioner's designee shall convene the requested informal conference within seven (7) days of the date of receipt of the request. The conference is informal and the service or facility has the right to be represented by counsel at all stages of the informal conference.

(3) The sole issue to be determined at the informal conference is whether the service or facility was operating without a license as required by this part prior to or concurrently with the date of the entry of the order. This part and its rules, control this determination. At the conference the commissioner may uphold, amend, or rescind the cease and desist order.

Unless contested under subdivision (c)(3), the original or amended cease and desist order becomes a final order within seven (7) days.

(4) If the commissioner or the commissioner's designee determines, as a result of the informal conference, that the cease and desist order should be amended or should not be rescinded, the owner or legal representative of the service or facility may seek review of the order under Title 4, Chapter 5, Part 3. The request shall be made in writing to the commissioner within seven (7) days of receipt of written notice of the commissioner's decision. Upon receipt of the request, the commissioner shall immediately refer the matter to the Department of State for initiation of contested case proceedings.

(5) If the respondent fails to request an informal conference under subdivision (c)(1), then the cease and desist order becomes a final order of the commissioner within thirty (30) days of its entry. The service or facility may obtain judicial review of this final order in the chancery court of Davidson County under Title 4, Chapter 5, Part 3.

(d) It is a Class B misdemeanor to violate a cease and desist order lawfully entered by the commissioner. Each day of operation in violation of the commissioner's cease and desist order, calculated from the date of its service upon the owner or operator of the service or facility, is a separate offense.

(e) Nothing in this part precludes any person, including the department, who is aggrieved by the operation of an unlicensed service or facility from pursuing other remedies and sanctions, including those provided by §§ 33-2-405 and 33-2-411.

33-2-417 [Derived from current § 33-5-105]

(a) Any residential facility that houses persons with developmental disabilities and is required by law to be licensed by the department shall not receive a license if the facility houses more than four (4) such service recipients and is not licensed on the effective date of this act for rule making. The department shall not license more than two (2) such residential facilities within five hundred (500) yards in any direction from other such facilities housing service recipients. All set back requirements applicable to lots where such facilities are located shall apply to such residential facilities.

(b) This section does not apply to:

(1) Housing for persons with mental illness or serious emotional disturbance; or

(2) Housing for residents on property owned or leased by the state or a corporation that provides such housing if the property was recorded in the corporate or state name before January 1, 1989.

## Part 5

### Transportation

33-2-501 [NEW]

The department shall develop an array of options for transportation for all regions of the state that shall include but not be limited to willing family members, transportation agents that



are available twenty-four (24) hours per day, ambulance or other medically appropriate vehicles, law enforcement, and public and private service providers.

### 33-2-502 [NEW]

The department shall, at least annually, convene a meeting on transportation service for persons with developmental disabilities, mental illness, and serious emotional disturbance. The purpose is to promote development of interagency agreements under § 33-1-308 that assure availability of generic and specialized transportation services to service recipients and their families, coordinate service options, coordinate and maximize utilization of funding mechanisms, assure training of transportation personnel in best practices for transporting service recipients. Participants shall include affected state agencies, local government, public and private transportation service providers, mental health and developmental disabilities service providers, and service recipients and members of service recipient families. There shall be a sufficient number of service recipients and their family members to assure effective representation in the meeting.

## Part 6

### Conflict Resolution

### 33-2-601 [NEW]

The department shall adopt rules for conflict resolution procedures to assure quick resolution, minimize disruption of service and support to service recipients, and minimize the cost of conflicts in providing services and supports.

### 33-2-602 [NEW]

Every Title 33 licensee shall have a clear conflict resolution procedure, including an appeal process, that complies with the department's rules and shall communicate the procedure to each service recipient and family involved in the service. Termination of service or support because a third party payer refuses to continue to fund the service or support is not subject to the conflict resolution procedure. The location where service or support is to be provided is not subject to the conflict resolution procedure unless the location is inaccessible to the service recipient and the service recipient's family, as appropriate.

### 33-2-603 [NEW]

The conflict resolution procedure shall include an informal meeting of affected persons in a location accessible to all parties with the intent to identify and resolve the issues within fourteen (14) days of an issue being raised. Informal meetings also may be conducted by telephone conference call, computer-aided meeting processes, and other media in which all parties can participate reasonably effectively. If issues about decisions or actions of service providers that involve health and safety concerns in service delivery, confidentiality, or disclosure of service recipient information have not been satisfactorily resolved during the informal meeting, an appeal process or a mediation meeting shall be begun within fourteen (14) days of the failure to resolve the conflict through the informal meeting. If mediation is used, all relevant parties shall meet with an agreed upon mediator. The mediator shall provide the parties a written statement of how the parties agreed to resolve the conflict within two (2) working days after the conclusion of the mediation.



## 33-2-604 [NEW]

While the issues raised are being resolved and until the parties have completed steps required under § 33-2-603, provision of service or support shall not cease or begin over objection of the service recipient.

## 33-2-605 [NEW]

This part does not apply to grievances that are to be resolved under § 33-5-209(4) policies and procedures.

## Part 7

## Community Mental Health Center Cooperation

## 33-2-701 [Current § 33-2-901]

This part shall be known and may be cited as the "Community Mental Health Center Cooperation Act of 1998."

## 33-2-702 [Current § 33-2-902]

It is the policy of this state to displace competition among community mental health centers with regulation to the extent set forth in this part, in order to promote cooperation and coordination among community mental health centers in the provision of mental health services to citizens receiving such services under programs funded or administered by departments or agencies of state government, including, but not limited to, the TennCare program.

## 33-2-703 [Derived from current § 33-2-903]

As used in this part, unless the context otherwise requires:

(1) "Community mental health center" includes any parent or corporate affiliate of a community mental health center as defined in § 33-1-101(6).

(2) "Cooperative agreement" means an agreement among two (2) or more community mental health centers for the offering, provision, operation, coordination, planning, funding, pricing, contracting, utilization review, or management of mental health and related services under programs funded or administered by departments or agencies of state government, including, but not limited to, the TennCare program, or the sharing, allocation, or referral of service recipients, personnel, instructional programs, support services, ancillary services, and facilities, or other services traditionally offered by community mental health centers for such programs;

(3) "Intervenor" means any hospital, physician, allied health professional, health care provider or other person furnishing goods or services to, or in competition with, community mental health centers, insurer, hospital service corporation, medical service corporation, hospital and medical services corporation, preferred provider organization, health maintenance organization, behavioral health organization, or any employer or association that directly or indirectly provides health care benefits to its employees or members.

33-2-704 [Current § 33-2-904]

(a) A community mental health center may negotiate and enter into cooperative agreements with other community mental health centers in the state if the likely benefits resulting from the agreements outweigh any disadvantages attributable to a reduction in competition that may result from the agreements.

(b) Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application shall include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials shall be submitted to the Attorney General and Reporter and to the department at the same time.

(c) The department shall review the application in accordance with the standards set forth in subsection (e) and may hold a public hearing in accordance with the rules adopted by the department. The department shall give notice of the application to interested parties by publishing a notice in the Tennessee Administrative Register in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. Any intervenor may intervene in the proceeding and shall have standing under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. The department shall grant or deny the application within sixty (60) days of the date of filing of the application, and that decision shall be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the Attorney General and Reporter, and any intervenor.

(d) If the cooperative agreement primarily relates to a program funded or administered by another department or agency of the state government, the department may refer the application to that other department or agency to conduct the review and render the decision required by this part.

(e) The department shall issue a certificate of public advantage for a cooperative agreement if it, or the other department or agency to which the department has referred the application pursuant to subsection (d), determines that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(f) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one (1) or more of the following benefits may result from the cooperative agreement:

(1) Enhanced quality of mental health and mental health-related care provided to Tennessee citizens, especially those receiving such services under programs funded or administered by departments or agencies of state government;

(2) Preservation of community mental health facilities in geographical proximity to the communities traditionally served by those facilities;

(3) Gains in the cost-efficiency of services provided by the community mental health centers involved;

(4) Improvements in the utilization of mental health resources and equipment;

(5) Avoidance of duplication of mental health resources; and

(6) Enhanced efficiency of the administration of programs of state government to provide mental health services to citizens of this state.

(g) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement shall include, but need not be limited to, the following factors:

(1) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payers to negotiate optimal payment and service arrangements with community mental health centers, or other health care providers;

(2) The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, community mental health centers that is likely to result directly or indirectly from the cooperative agreement;

(3) The extent of any likely adverse impact on person's with mental illness or serious emotional disturbance in the quality, availability and price of health care services; and

(4) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

(h) The department, or other department or agency to which the department has referred the application under subsection (d), shall consult with the Attorney General and Reporter regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement. The Attorney General and reporter may consult with the United States Department of Justice or the Federal Trade Commission regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.

(i) If the department, or the other department or agency to which the department has referred the application under subsection (d), determines that the likely benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department, or the other department or agency to which the department has referred the application under subsection (d), may initiate contested case proceedings to terminate the certificate of public advantage in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(j) The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within thirty (30) days after termination.

(k) The department, or the other department or agency to which the department has referred the application under subsection (d), shall review, on at least an annual basis, each

certificate of public advantage it has granted under this part. The certificate shall be renewed if it is determined that the certificate continues to comply with the standards of subsection (e).

33-2-705 [Current § 33-2-905]

Any applicant or intervenor aggrieved by a decision of the department, or the other department or agency of state government to which the department has referred the application under § 33-2-704(d), in granting or denying an application, refusing to act on an application, or terminating a certificate, is entitled to judicial review of the decision in accordance with Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

33-2-706 [Current § 33-2-906]

(a) Notwithstanding the provisions of Title 47, Chapter 25, or any other provision of law to the contrary, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding the provisions of Title 47, Chapter 25, or any other provision of law to the contrary, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. Nothing in this subsection immunizes any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

(b) If the department, or the other department or agency of state government to which the department has referred the application under § 33-2-703(d) determines that the likely benefits resulting from a cooperative agreement do not outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

(c) Any dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by principles of contract law.

33-2-707 [Current § 33-2-907]

The department has the authority to establish reasonable application fees to cover the actual costs of administering the provisions of this part by rules adopted in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. The department is authorized to adopt necessary rules to implement the provisions of this part in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

33-2-708 [Current § 33-2-908]

Unless otherwise permitted by law, nothing in this part shall be deemed to grant any community mental health center or group of community mental health centers pursuant to a cooperative agreement, the authority to operate as a health maintenance organization, preferred provider organization, or insurer without obtaining an appropriate license from the Department of Commerce and Insurance.

33-2-709 [Current § 33-2-909]

Nothing in this part shall be deemed to permit any referral to a provider-owned facility otherwise prohibited by state or federal law.

## Part 8

### State Facilities

#### 33-2-801 [Current § 33-2-103]

(a) The commissioner shall appoint a chief officer for each facility to serve at the pleasure of the commissioner.

(b) The commissioner shall appoint chief officers of facilities without regard to residence on the basis of merit as measured by administrative abilities and a demonstrated quality of leadership. The chief officer shall hold a recognized degree as a psychiatrist, doctor of medicine, behavioral scientist, social scientist, public administrator, hospital administrator, or other profession involved with human development, human welfare, or health administration.

(c) Chief officers shall have all of the authority conferred upon them by this title and such other authority as is delegated to them by the commissioner. Chief officers have the authority to administer oaths.

#### 33-2-802 [Current § 33-2-104]

Each chief officer shall give an official bond, in a sum to be fixed by the Commissioner of Finance and Administration, the Comptroller of the Treasury and the Treasurer, to be executed, conditioned and filed in accordance with the provisions of Title 8, Chapter 19. The cost of the bond shall be paid from funds available to the facility.

#### 33-2-803 [Current § 33-2-105]

(a) The chief officer shall be under the direction of the commissioner and shall have the following powers and duties:

(1) To exercise general superintendence over all matters relating to the facility;

(2) To perform the duties of a treasurer of the facility without any additional compensation, depositing all moneys coming into the chief officer's hands in some one of the banks designated as state depositories, for safekeeping, until drawn out from time to time for the benefit of the facility; and

(3) To make reports as the commissioner may require.

(b) The chief officer shall be authorized to make written application to the Governor of Tennessee for issuance of requisition papers for the purpose of returning any person to the State of Tennessee who has left a facility without authorization and fled from the State of Tennessee when the person with mental illness, serious emotional disturbance, or developmental disability had been committed to the facility or the custody of the commissioner. The application shall be in the same form as required for the return of a fugitive from justice.

(c) The provisions of Chapter 4, Part 2 of this title, to the extent that their application would be contrary to other statutes or to federal law, shall not apply to money or funds which are paid to the chief officer of a facility by the Veterans' Administration.

33-2-804 [Derived from current § 33-2-106]

Officials connected with management of any of the department's facilities are prohibited from contracting to furnish any supplies or equipment for use in the operation or support of any such facility, and any official who violates this section shall forfeit the right to serve as such official.

33-2-805 [Current § 33-2-107]

The security guards at all department facilities and other personnel the commissioner may designate are vested with the powers and authority of peace officers and shall exercise such powers and authority on the grounds of facilities under the supervision of the department.

33-2-806 [Current § 33-2-108]

The enclosed premises and the adjoining land belonging to, or used by and for any of the state facilities, are private grounds. If a person goes on such premises without authority or permission, the person commits a Class C misdemeanor.

## Part 9

### State Facilities Boards of Trustees

33-2-901 [Derived from current § 33-2-201]

(a) In order to coordinate the activities of the department's facilities, to advise the chief officer at each facility, and to better acquaint the public with the needs and activities of the facility, there shall be boards of trustees for each facility to be composed of fifteen (15) members each.

(b) (1) The commissioner, the appropriate assistant commissioner, and the chief officer at each facility shall be *ex officio* members of each board of trustees.

(2) The fifteen (15) members shall be appointed by the commissioner, and all shall reside in the area served by the facility.

(3) State officials are eligible for appointment by the commissioner, but not more than three (3) state officials shall be appointed members of such board at the same time.

(c) The chair and the vice-chair of each board shall be designated by the commissioner.

(d) The members of each board shall receive no compensation but shall receive their actual traveling expenses for attendance upon meetings of the boards. All reimbursement for travel expenses shall be in conformity with the comprehensive travel rules.

(e) The chief officer of each facility shall serve as secretary for the respective boards.



(f) The board shall meet at least annually at a place to be designated by the chair and may meet more often upon call of the chair, or a majority of the members.

(g) The term of board members shall be three (3) years. Terms shall be staggered so that five (5) terms expire each year. The terms of members begin on July 1 next following the appointments. Subsequent appointments shall be made for a period of three (3) years except that vacancies shall be filled by appointment by the commissioner for the unexpired term only. A member may serve no more than two (2) consecutive full terms.

(h) Members may be removed upon their failure to attend at least one half (1/2) of the scheduled meetings in any one (1) year period or for good cause.

33-2-902 [Derived from current § 33-2-202]

(a) It is the duty of each board of trustees to advise the chief officer of each facility concerning the formulation of general policies to be followed in the operation of the facility under the chief officer's jurisdiction, to recommend to the department appropriate legislation for resources and other concerns for the facility, and to publicize generally the condition of the facility and its needs.

(b) Each board of trustees in conjunction with its chief officer shall report annually to the commissioner.

#### Part 10

##### Costs Outside State Facilities

33-2-1001 [Derived from current § 33-2-401]

Any corporation which is exempted from taxation under 26 U.S.C. § 501(c)(3), as amended, and which contracts with the department to provide services or supports to the public shall be authorized to purchase or contract to purchase goods or services at the same terms and conditions as that contracted for by the state under state purchasing contracts. Purchases by and for such corporation shall not be required to be made through the purchasing division of the Department of General Services.

#### Part 11

##### Costs in State Facilities

33-2-1101 [Current § 33-4-101]

(a) The commissioner, with the approval of the Comptroller of the Treasury and the Commissioner of Finance and Administration, shall establish by rule a method for determination at least annually of charges for services and supports provided to service recipients in programs operated by the department, including the charges for all institutional or professional services.

(b) Charges shall be calculated using generally accepted accounting principles.

33-2-1102 [Current § 33-4-102]

(a) The commissioner, with the approval of the Comptroller and the Commissioner of Finance and Administration, shall establish rules for determining indigence and payments to be made periodically by non-indigent recipients of service or their responsible relatives.

(b) Periodic payments by the recipient of service or the responsible relative shall be based on ability to pay as determined by factors the commissioner considers relevant.

33-2-1103 [Current § 33-2-103]

If a person is a service recipient in a program operated by the department or is the parent of an unemancipated child who is a service recipient in a program operated by the department, then the person is liable for the charges for the services and supports provided.

## 33-2-1104 [Current § 33-4-105]

If a service recipient who is not indigent receives service from a program operated by the department, then the department shall at least annually establish an amount to be paid periodically by the service recipient and each responsible relative.

## 33-2-1105 [Current § 33-4-107]

(a) The service recipient who receives services and supports, the service recipient's conservator or guardian, and persons who are legally liable for charges for services and supports shall furnish all information which the department deems necessary to determine the person's financial liability.

(b) If a person willfully refuses to provide such information or knowingly provides false information which results in an underassessment of liability, the person is liable for the total charges for services and supports provided and for the amount of the state's expenses incurred in recovering such amounts, including attorney salaries or fees.

## 33-2-1106 [Current § 33-4-108]

If a service recipient obtains services and supports under a court order from a program operated by the department, the department may demand any of the service recipient's money which is in the custody of the court and credit it to the service recipient's account.

## 33-2-1107 [Current § 33-4-109]

The state has a continuing claim against the recipient of service from a program operated by the department and the recipient's estate and against responsible relatives for any unpaid difference between what the department determines the person owes and what was paid for the service provided. If the recipient of service dies, or a responsible relative of the recipient of service dies, and the commissioner presents a claim for a sum unpaid and owing to the state on account of the recipient of service, then the claim shall be paid from the estate of the deceased person.

## 33-2-1108 [Current § 33-4-111]

If a person who is not legally responsible to pay for a service recipient's care contributes funds voluntarily for the service recipient's care, the department may accept such funds.

## 33-2-1109 [Current § 33-4-112]

(a) No service recipient may receive care at the expense of the state in a program operated by the department except:

(1) One who is indigent;

(2) A person subject to evaluation, diagnosis, or treatment under §§ 33-5-402--33-5-403, Chapter 5, Part 5, §§ 33-7-301(a) or 33-7-303(a), or Chapter 7, Part 4;

(3) A person whose service is paid for, in part, by state or federal government and the payment is conditioned on the department's acceptance of it as full satisfaction of the person's liability; or

(4) A person whose service is paid for by the service recipient or another person or a third party and the department determines, under standards approved by the Commissioner of Finance and Administration and the Comptroller of the Treasury, that the state's interests are best served by accepting payment offered as full satisfaction of the service recipient's liability.

(b) Subdivision (a)(4) does not apply to any claim for payment for which the state has a suit pending to recover payment.

33-2-1110 [Current § 33-4-113]

There shall be no discrimination in provision of services or supports based on inability to pay.

## Part 12

### Personnel and Volunteers

33-2-1201 [Current § 33-1-209(a)-(b)]

(a) To help the department determine the suitability of a person for volunteer services or employment and verify the accuracy of information submitted in support of an application to work for the department, any person who applies to work for the department as an employee, or any volunteer, whose function would include direct contact with or direct responsibility for persons with mental illness or developmental disabilities shall:

(1) Agree to the release of all investigative records about the person from any source, including federal, state and local governments; and

(2) Supply a fingerprint sample for the conduct of a criminal background investigation by the Tennessee Bureau of Investigation. If no disqualifying record is identified, the bureau shall send the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(b) The department shall pay the costs for conducting any investigation under this section.

33-2-1202 [Derived from current § 33-1-209(c)]

(a) As used in this section and § 38-6-114(c), "organization" means a facility or service licensed under Chapter 2, Part 4 of this title.

(b) Each organization shall have a criminal background check performed on each employee whose responsibilities include direct contact with or direct responsibility for service recipients. The organization shall inform the employee that it will conduct a background check. Within ten days of employment or within ten days of a change of responsibilities that includes direct contact with or direct responsibility for service recipients, the employee shall:

(1) Provide past work history containing a continuous description of activities over the past five (5) years;

(2) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant for at least five (5) years;

(3) Release all investigative records to the organization for examination for the purpose of verifying the accuracy of criminal violation information contained on an application to work for the organization; and

(4) (A) Supply fingerprint samples to be submitted for a criminal history records check to be conducted by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation; or

(B) Release information for a criminal background investigation by a Tennessee licensed private investigation company.

(c) The organization shall check past work and personal references prior to employment of applicants. At a minimum the organization shall communicate directly with the most recent employer and each employer identified by the applicant as having employed the applicant for more than six (6) months in the past five (5) years. The organization shall communicate directly with at least two (2) of the personal references identified by the applicant. Within or prior to ten (10) days of employment of such person, organizations shall submit the information required to be provided by this subsection to the entity which will conduct the criminal background check.

(d) Any cost incurred by the Tennessee Bureau of Investigation, the Federal Bureau of Investigation, or a Tennessee licensed private investigation company shall be paid by the organization requesting such investigation and information. If the background check is conducted by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation, the payment of such costs shall be made in the amounts established by § 38-6-103.

## Part 13

## Conflict of Interest

33-2-1301 [Current § 33-3-112(a)]

IF

(1) (A) A person is an officer or employee of the department, OR

(B) A person is an officer or employee of a licensee of the department, AND

(2) (A) The person or the person's spouse, parent, grandparent, brother, sister, or child has an ownership interest in a residential facility which is not publicly held or an ownership interest in a business which is not publicly held that owns or manages a residential facility that provides mental health or developmental disabilities services or supports, OR

(B) The person or combination of persons named in subdivision (2)(A), has an ownership interest of at least thirty-five percent (35%) in a residential facility which is publicly held that provides mental health or developmental disabilities services, OR

(C) The person or combination of persons named in subdivision (2)(A), has an ownership interest of at least thirty-five percent (35%) in a business that is publicly held that owns or manages a residential facility that provides mental health or developmental disabilities services,

THEN

(3) The person shall disclose the interest to the department or licensee, AND

(4) The person may not serve in a capacity of decision making or influence or responsibility for the direct referral or placement of persons to any residential facility that provides mental health or developmental disabilities services or supports.

33-2-1302 [Current § 33-3-112(b)]

If a person violates § 33-2-1301, the commissioner shall assess a civil penalty of one thousand five hundred dollars (\$1,500) per incident against such person for each violation. A penalty shall be assessed only after an informal hearing is held in the same manner as an informal hearing is held prior to the suspension of a license under § 4-5-320(d). If services or supports to a recipient of mental health or developmental disabilities services or supports have been provided in violation of § 33-2-1301, the commissioner may:

(1) Require transfer of the recipient of services or supports to another provider of services or supports as soon as is reasonably practical;

(2) Authorize the recipient of services or supports to remain with the provider of services or supports if the commissioner determines it to be in the best interests of the recipient of services or supports to remain with the provider of services or supports;

(3) Restrict the referral of other recipients of services or supports to such provider of services or supports;

(4) Exercise a combination of the preceding powers, or

(5) Impose any other appropriate sanctions in the discretion of the commissioner.

33-2-1303 [Current § 33-3-112(c)]

A person to whom this part applies shall disclose such information before being hired or as a part of a contract entered into with a provider of mental health or developmental disabilities services or supports. Failure to disclose such information shall subject the person to removal from the position held or the contract to cancellation or renegotiation.

33-2-1304 [Current § 33-3-112(d)]

If a person is relieved of such decision making authority or responsibility under this part, the personnel records of the officer or employee shall state that the officer or employee was relieved of such authority or responsibility solely to conform to this part.

### CHAPTER 3

#### GENERAL RULES APPLICABLE TO SERVICE RECIPIENTS

##### Part 1

##### General Rights of All Service Recipients

33-3-101 [NEW; (a) is similar to current 33-3-101]

(a) No person shall be deprived of liberty on the grounds that the person has or is believed to have a mental illness, a serious emotional disturbance, a developmental disability, or is in need of service for such a condition except in accordance with the provisions of this title.

(b) A person with mental illness, serious emotional disturbance, or developmental disability has the same rights as all other persons except to the extent that the person's rights are curtailed in accordance with this title or other law.

33-3-102 [Derived from Tenn. Code Annotated, § 33-3-104(5)]

(a) No person with mental illness, serious emotional disturbance, or developmental disability hospitalized or admitted, whether voluntarily or involuntarily, or ordered to participate in non-residential treatment or service under this title shall, solely by reason of such hospitalization, admission, or order be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, give informed consent to treatment, and vote, unless (1) the service recipient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity or (2) the denial is authorized by Tennessee or federal statute. If the chief officer of a facility in which a service recipient is hospitalized or admitted is of the opinion that the service recipient is unable to exercise any of the aforementioned rights, the chief officer shall notify immediately the service

recipient and the service recipient's attorney, parent, legal custodian, spouse or other nearest known adult relative of the fact, and the chief officer may file for the appointment of a conservator and shall notify those persons as to whether the chief officer intends to do so.

(b) No person shall make decisions for a service recipient on the basis of a claim to be the service recipient's conservator, legal guardian, guardian *ad litem*, or to be acting under a durable power of attorney for mental health treatment under Title 34, Chapter 6, Part 2, until the person has presented written evidence of the person's status.

33-3-103 [NEW; derived from current § 33-3-104(10)]

All applications, certificates, records, reports, legal documents, and pleadings made and all information provided or received in connection with services applied for, provided under, or regulated under this title and directly or indirectly identifying a service recipient or former service recipient shall be kept confidential and shall not be disclosed by any person except in compliance with this part.

33-3-104 [Derived from current 33-3-104(10)]

Information about a service recipient that is confidential under § 33-3-103 may be disclosed with the consent of:

- (1) The service recipient who is sixteen (16) years of age or over;
- (2) The conservator of the service recipient;
- (3) The attorney in fact under a power of attorney who has the right to make disclosures under the power;
- (4) The parent, legal guardian, or legal custodian of a service recipient who is a child;
- (5) The service recipient's guardian *ad litem* for the purposes of the litigation in which the guardian *ad litem* serves;
- (6) The treatment review committee for a service recipient who has been involuntarily committed; or
- (7) The executor, administrator or personal representative on behalf of a deceased service recipient.

33-3-105 [NEW; derived from current 33-3-104(10)(A), (B)]

Information that is confidential under § 33-3-103 may be disclosed without consent of the service recipient if:

- (1) Disclosure is necessary to carry out duties under this title;
- (2) Disclosure may be necessary to assure service or care to the service recipient by the least drastic means that are suitable to the service recipient's liberty and interests;



(3) As a court orders, after a hearing, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to public interest or to the detriment of a party to the proceedings;

(4) It is solely information as to a residential service recipient's overall medical condition without clinical details and is sought by the service recipient's family members, relatives, conservator, legal guardian, legal custodian, guardian *ad litem*, foster parents, or friends;

(5) A service recipient moves from one service provider to another and exchange of information is necessary for continuity of service, but the transferring service provider may provide information only as to the service recipient's current medication, allergies, diagnosis, and serious medical conditions to the receiving provider; or

(6) A custodial agent for another state agency that has legal custody of the service recipient cannot perform the agent's duties properly without the information.

#### 33-3-106 [NEW]

(a) If the head of the federally mandated protection and advocacy agency for persons with mental illness, serious emotional disturbance, or developmental disability or the agency head's designated representative requests disclosure of information protected by § 33-3-103 and specifies the personally identifiable service recipient information sought and the federally mandated function for which it is required, the information may be disclosed to the agency without consent. The disclosure of information shall be made solely for use in connection with the federally mandated function. Such disclosures are subject to federal confidentiality laws, including the requirement that there be no further disclosure of the personally identifiable information by the agency without consent of the service recipient or conservator or of the parent's or legal guardian's consent in the case of a child. The service provider shall notify the service recipient, a child service recipient's parent or legal guardian, and the service recipient's conservator, if any, of such disclosure. All public and private service providers shall cooperate with the agency in responding to such requests, including without limitation those made under Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6000 *et seq.*; the Protection and Advocacy for Mentally Ill Individuals (PAIIM) Act of 1986, 42 U.S.C. § 10801 *et seq.*; and the Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794 (e).

(b) If an organization may pay for a service provider's service to a service recipient, the service provider may disclose to the organization without service recipient consent only such information about the service recipient as is reasonably necessary to obtain timely payment. Such disclosures are on the condition that there be no further disclosure of the personally identifiable information by the agency without service recipient consent.

(c) If the department determines that an emergency substantially impairs a provider's capacity to provide service to its service recipients and the department appoints a receiver for service recipient information, the service recipient's information may be transferred to a new service provider without service recipient consent.

#### 33-3-107 [NEW]

The department may adopt rules to implement § 33-3-103--114, including rules on the form, content, and means of consent and disclosure, scope of permissible disclosure, and definitions of terms.

33-3-108 [Current § 33-3-104(10)(B)]

Section 33-3-103 does not preclude making reports of harm or granting access to records if making reports of harm or granting access to records are expressly required by Title 37, Chapter 1, Parts 4 and 6, and Title 71, Chapter 6.

33-3-109 [Derived from current § 33-3-104(10)]

Court clerks shall keep separate records of adjudications of incompetence and of restoration of competence. Such records shall include nothing but the finding of incompetence or competence, and the finding shall be open for inspection by members of the public. All other records in connection with such cases are not public and are confidential under § 33-3-103.

33-3-110 [Essentially current § 33-3-104(10)(C)]

Section 33-3-103 does not prohibit disclosure to a law enforcement agency that has jurisdiction over felonious acts of bodily harm or sexual offenses that appear to have been committed on the premises of a facility whose records are made confidential by § 33-3-103. If the felonious act involves a sexual offense governed by Title 37, Chapter 1, Part 6 and Title 71, Chapter 6, Part 1, in a locality having a sex abuse crime unit, disclosure for law enforcement investigative purposes shall be made only to that unit of the law enforcement agency. The preceding sentence does not limit the requirements of disclosure of reports of harm and access to records required by Title 37, Chapter 1, Parts 4 and 6 and Title 71, Chapter 6, Part 1 for investigations by the Department of Human Services. Permissible disclosure of a felonious act for the purpose of conducting a necessary investigation includes:

(1) The name of, and providing access to, witnesses or potential witnesses of such offense;

(2) The name of, and providing access to, suspects or potential suspects of such offense; and

(3) The scene of, and providing access to, where such offense occurred.

33-3-111 [Similar to current § 33-3-104(10)(D)]

(a) In any case where a person is known to have been accused of physically or sexually abusing or neglecting a service recipient who is a child, the service recipient's record shall not be accessible to the person accused of such abuse or neglect except if:

(1) A court orders access under subdivision § 33-3-105(3); or

(2) (A) The child's qualified mental health professional has determined in the course of such treatment or service, after consultation with the child, the child's guardian *ad litem*, and others on the child's behalf whom the professional deems appropriate, that

the release of the child's record to the accused person would not be harmful to the child, and

(B) The accused person is the parent, legal guardian, or legal custodian of the child.

(b) If the court permits access to the child's record under subsection (a), the court shall have jurisdiction to issue any necessary orders to control access to and use of the information by the person seeking access including the issuance of injunctive relief.

### 33-3-112 [NEW]

(a) Upon request by a service recipient sixteen years of age or older, a service provider shall disclose to the service recipient what records the provider maintains on the service recipient and how the service recipient can obtain access to them. Upon written request by a service recipient a service provider shall permit the service recipient within a reasonable time to review the service recipient's record itself or the part of it that the service recipient requests or a copy of the record or the part except to the extent that

(1) Service recipient access to the record is expressly restricted or prohibited by another statute or

(2) The provider is authorized to deny access under subsection (b) of this section.

(b) If a person's qualified mental health professional determines that giving the service recipient, or a person acting for the service recipient, access to part of the service recipient's record poses a substantial risk of serious harm to the health or safety of the service recipient or another person, then the qualified mental health professional may refuse access to that part of the record.

### 33-3-113 [NEW]

(a) If a service recipient requests amendment of the service recipient's record by revision, deletion, or addition to correct the record, the service provider shall, within ten working days after receiving the request, either make such amendment to assure that service recipient records do not contain inaccurate, irrelevant, or otherwise inappropriate information or inform the service recipient of its refusal, of the reason for the refusal, and of the procedure, if any, for further internal review of the decision.

(b) If any provider decides that it will not amend the record in accordance with the request, it shall permit the service recipient to file a concise statement of the reasons for the service recipient's disagreement.

(c) If any provider discloses any of the disputed information, it shall clearly note the disputed information and provide a copy of the statement of disagreement. If the provider wishes, it may also provide a concise statement of its reasons for not making the requested amendments.

(d) The service recipient may not personally alter the record.

## 33-3-114 [NEW]

Notwithstanding any evidentiary privilege a qualified mental health professional may have, including §§ 24-1-207, 63-11-213, 63-22-114, and 63-23-107, the qualified mental health professional may be compelled to testify in:

(1) Judicial proceedings under this title to commit a person with mental illness, serious emotional disturbance, or developmental disability to treatment if the qualified mental health professional decides that the service recipient is in need of compulsory care and treatment, and

(2) In proceedings for which the qualified mental health professional was ordered by the court to examine the service recipient if the service recipient was advised that communications to the qualified mental health professional would not be privileged.

## 33-3-115 [Current § 33-3-104(10)(B)]

A violation of §§ 33-3-103--114 is a Class C misdemeanor.

## 33-3-116--33-3-119 [RESERVED]

## 33-3-120 [NEW]

(a) Service recipients have the right to be free from isolation and restraints, in any form, imposed as a means of coercion, discipline, convenience or retaliation by staff. Restraints include physical and mechanical restraints and drugs used to control behavior or to restrict freedom of movement if the drug or the dosage of the drug is not a standard treatment for the service recipient's medical or psychiatric condition. Isolation is placement of a person alone in a room from which egress is prevented. Isolation and restraint may be used only while the condition justifying its use exists.

(b) A person with mental illness or serious emotional disturbance may be isolated or restrained only in emergency situations if necessary to assure the physical safety of the person or another person nearby or to prevent significant destruction of property. If a person imposes restraints or isolation, the person shall immediately contact a qualified mental health professional who is permitted under department rules to authorize the isolation or restraint. If the treating physician is not the person who orders isolation or restraint, the treating physician shall be consulted as soon as possible. A professional authorized to permit isolation or restraint shall see and evaluate the person for the need for isolation or restraint within one hour of the intervention.

(c) A person with developmental disability may be restrained only as part of an approved plan or in emergency situations if necessary to assure the physical safety of the person or another person nearby or to prevent significant destruction of property. Isolation may only be used with a person with developmental disability as part of the person's approved plan. Only psychologists, psychological examiners, physicians, behavior analysts, masters degree social workers, and others authorized to do so under department rules may develop a plan that includes or authorizes isolation or restraint of a person with developmental disability.

(d) Staff shall remain in the physical presence of a person in restraint. Staff shall continuously observe a person in isolation or restraint for the health and well being of the person.

(e) The professional shall record the use of restraint or isolation, the reasons for its use, and the duration of its use in the person's record.

(f) All staff who may have direct contact with a person being restrained or secluded shall receive ongoing education and training in alternative methods for handling behavior and the safe use of isolation and restraint.

(g) The department shall adopt rules as to circumstances under which use of restraint and isolation are permitted. The department shall distribute the rules to all who provide services covered by Title 33.

(h) The department shall report annually to the statewide planning and policy council on the use of restraint and isolation in the state and its rules on the subject.

33-3-121--33-3-124 [RESERVED]

33-3-125 [Current § 33-3-108]

A certificate of need for commitment for care and treatment as a person with mental illness, serious emotional disturbance, or developmental disability that is authorized or required to be made by a physician, psychologist, or other professional under this title is not valid for any purpose if:

(1) It is made by such a professional who is a relative by blood, marriage, or adoption, or the legal guardian, conservator, or legal custodian of the person who is the subject of the petition, application or certificate, OR

(2) It is made by a professional who has an ownership interest in a private facility in which the person is to be admitted.

## Part 2

### Special Liability Rules

33-3-201 [Similar to current §§ 33-10-101 and 33-10-102]

(a) As used in this section, unless the context otherwise requires:

(1) "Counseling center" means any nonprofit service operated at least partially with volunteer assistance that provides counseling, assistance or guidance, either in person or by telephone, to persons with mental illness or serious emotional disturbance; and

(2) "Counselor" means any psychiatrist, psychologist, licensed clinical psychologist, licensed marital and family therapists or other professional trained in the fields of psychiatry or psychology or any nonprofessional person acting under the guidance or supervision of such professionals.

(b) A counselor, while acting within the scope of responsibilities assigned by a counseling center, is not liable civilly or criminally for the suicide or attempted suicide of any person consulting the counselor.

33-3-202 [Current § 33-3-304]

(a) While acting in good faith, the directors of a not for profit corporation that provides community residential services or supports for persons with mental illness, serious emotional disturbance, or developmental disability shall not be held personally liable for tortious acts committed by the corporation's service recipients.

(b) Subsection (a) does not preclude imposition of personal liability on a director who also acts as a paid officer or employee of the corporation.

33-3-203--33-3-205 [RESERVED]

33-3-206 [Derived from current § 33-10-302(a)]

IF AND ONLY IF

(1) A service recipient has communicated to a physician, psychologist, psychological examiner, behavior analyst, or licensed clinical social worker an actual threat of bodily harm against a clearly identified victim, AND

(2) The professional, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by such professional's specialty under similar circumstances, has determined or reasonably should have determined that the service recipient has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so,

THEN

(3) The professional shall take reasonable care to predict, warn of, or take precautions to protect the identified victim from the service recipient's violent behavior.

33-3-207 [Similar to current § 33-10-302(b)]

The duty imposed by § 33-3-206 may be discharged by the professional or service provider by:

- (1) Informing the clearly identified victim of the threat;
- (2) Having the service recipient admitted on a voluntary basis to a hospital;
- (3) Taking steps to seek admission of the service recipient to a hospital or treatment resource on an involuntary basis pursuant to Chapter 6; or
- (4) Pursuing a course of action consistent with current professional standards that will discharge the duty.

33-3-208 [Derived from current § 33-10-303]

IF AND ONLY IF

(1) An employee of a service provider is normally responsible for transmitting or recording communications from a service recipient to a physician, psychologist, psychological examiner, behavior analyst, or licensed clinical social worker, AND

(2) The employee receives a communication from a service recipient of an actual threat of bodily harm against a clearly identified victim,

THEN

(3) The employee shall communicate the threat to such a professional employed by the service provider.

33-3-209 [Derived from current §§ 33-10-302(a) and 33-10-303]

If a professional or an employee has satisfied the person's duty under § 33-3-206 or § 33-3-208, no monetary liability and no cause of action may arise against the professional, an employee, or any service provider in whose service the duty arose for the professional's or employee's not predicting, warning of, or taking precautions to provide protection from violent behavior by the person with mental illness, serious emotional disturbance, or developmental disability.

33-3-210--33-3-211 [RESERVED]

33-3-212 [NEW]

IF

(1) (A) A person has refused to perform any act that is prohibited by or is not lawful under Title 33, OR

(B) A person has relinquished authority over a service recipient based on a decision by another to whom Title 33 gives express authority to make such a decision,

THEN

(2) No monetary liability and no cause of action may arise against the person or the service provider in whose service the person was acting for such conduct.

33-3-213--33-3-216 [RESERVED]

33-3-217 [NEW]

The department shall by rule prescribe a uniform assessment process by which to determine whether a service recipient lacks capacity to make decisions on issues within the meaning of § 33-3-218.

33-3-218 [NEW]

IF

(1) (A) A service recipient, due to mental retardation or mental impairment related to a developmental disability, is unable to make an informed decision about application for admission to a developmental center under § 33-5-301, request discharge under § 33-5-303, or a routine medical, dental, or mental health treatment, OR

(B) A service recipient, due to a diagnosed mental illness, is unable to make an informed decision about application for admission to a hospital or treatment resource under § 33-6-201, request discharge under § 33-6-206, mental health treatment, release of information to other qualified mental health professionals or case management agencies, getting information from other treatment agencies, or release of information to a family member, AND

(2) The incapacity is shown by the fact that the person is not able to understand the proposed procedure, its risks and benefits, and the available alternative procedures,

THEN

(3) The person "lacks capacity" under this title for decision about that matter at this time.

33-3-219 [NEW]

IF

(1) (A) An adult with developmental disability does not have a conservator, OR

(B) A child with developmental disability does not have a parent or legal guardian, AND

(2) A licensed physician or dentist determines that the person lacks capacity to make a decision about a routine medical, dental, or mental health treatment, AND



(3) The physician or dentist uses the assessment process prescribed by rule under § 33-3-217, AND

(4) The physician or dentist determines that someone is eligible to serve as a surrogate decision-maker for the service recipient on the matter in question under § 33-3-220, AND

(5) The service recipient does not reject the proposed surrogate for the decision in any way, AND

(6) The physician or dentist provides the surrogate the information necessary to an informed decision,

THEN

(7) The surrogate may decide for the service recipient with respect to the matter in question, AND

(8) The surrogate who acts in good faith, reasonably and without malice in connection with the decision shall be free from all liability, civil or criminal, by reason of the decision.

33-3-220 [NEW]

IF

(1) A physician or dentist reasonably determines that an adult:

(A) Knows about a service recipient's developmental disability and condition as it relates to the matter in question,

(B) Is actively involved in the service recipient's life,

(C) Is willing to make a decision for the service recipient on the matter in question,

(D) Appears to be reasonably capable of making such a decision and likely to make it objectively in the service recipient's interest,

(E) Appears to have no conflict of interest with the service recipient, and

(F) Is, in order of descending preference for service as a surrogate:

(i) The service recipient's spouse,

(ii) The service recipient's adult child,

(iii) The service recipient's parent or stepparent,

(iv) The service recipient's adult sibling,

- (v) Any other adult relative of the service recipient, or
- (vi) Any other adult,

THEN

(2) The adult is eligible to serve as a surrogate decision-maker for the service recipient on the matter in question under §§ 33-3-219--33-3-221.

33-3-221 [NEW]

IF

(1) The physician or dentist knows of no family member, of the same or higher order of preference as the surrogate under subdivision (1)(F) of § 33-3-220, who objects to the surrogate's decision, AND

(2) The proposed treatment is not solely for behavior control of a service recipient,

THEN

(3) The physician or dentist may act on the surrogate's decision as if the service recipient had the capacity to consent and had consented personally, AND

(4) The physician or dentist who acts in accord with and in good faith reliance on the surrogate's decision is not subject to criminal prosecution, civil liability, or professional disciplinary action based on a subsequent finding of the invalidity of the surrogate's decision.

### Part 3

#### Transfers of Residential Service Recipients

33-3-301 [Same section number and basic content as current code]

(a) The commissioner may authorize the transfer of a person in a facility of the department to another department facility or to a private facility under this section. The commissioner shall give due consideration to the relationship of the person to family, guardian, conservator, and friends so as to maintain relationships and encourage visitation beneficial to the person. If a person whose transfer is authorized has been admitted or committed by court order, a certified copy of the court order shall be sent to the facility to which the person is transferred.

(b) (1) If the commissioner determines:

(A) That a person could more properly be cared for and treated in a facility other than the one in which the person is a service recipient, and

(B) That the transfer is in the person's best interest, the commissioner may authorize the person to be transferred for an indefinite period to another department

facility. The person may be transferred to a secure facility if and only if, in addition, the commissioner determines that the person is substantially likely to injure such person or others if not treated in a secure facility. Notwithstanding any other provisions of this section, any transfer to a developmental center authorized under this section shall not exceed forty-five (45) days unless the transfer complies with department rules.

(2) Before a transfer is authorized, the person shall be given a physical examination by a licensed physician and a mental assessment and evaluation by a qualified professional, and complete written reports of the examination, assessment, and evaluation shall be forwarded to the commissioner by the chief officer who recommends the transfer. The reports and the chief officer's recommendation shall each include a certification that the transfer is in the person's best interests and a statement of the reasons for the conclusion.

(3) The chief officer, upon recommending transfer, shall immediately give personal notice of the recommendation by telephone or otherwise to the person's spouse, parent, adult child, legal guardian, or conservator, if any, and to the person. No person may be transferred less than twenty-four (24) hours after the notices required by this subdivision have been given, unless the person's spouse, parent, adult child, or legal guardian or conservator, if any, has agreed to the transfer or unless a diligent attempt by the chief officer to give notice is unsuccessful.

(4) The commissioner, upon authorizing transfer, shall immediately give to the person's spouse, parent, or adult child, legal guardian or conservator, if any, the committing court, if any, and to the service recipient written notice of the decision and a complaint form for review of transfer in the circuit court under Part 7 of this chapter. The person may then be transferred immediately.

(c) (1) If the commissioner determines, upon the recommendation of the chief officer who requests a transfer:

(A) That a person requires emergency care and treatment that cannot be provided by the transferring facility and

(B) That the transfer is in the person's best interest, the commissioner may authorize the person to be transferred immediately to another department facility. The person may be transferred to a secure facility if and only if, in addition, the commissioner determines that the person is substantially likely to injure such person or others if not treated in a secure facility.

(2) If the commissioner approves the emergency transfer, the commissioner shall notify the chief officers of the transferring and receiving facilities. The chief officer of the transferring facility shall then have the person transferred immediately.

(3) Within seventy-two (72) hours after the transfer, the chief officer of the receiving facility shall determine whether the transfer was appropriate. If the chief officer determines that the transfer was not appropriate, the chief officer shall return the person to the sending facility. If the chief officer determines that the transfer was appropriate, the chief officer shall immediately give the person written notice of the decision.

(4) Such a transfer shall not exceed thirty (30) days, after which the chief officer shall return the person to the facility from which the person came.

(5) If the chief officer of the receiving facility determines that the person requires treatment beyond the thirty (30) day period, the chief officer shall notify the person in writing and apply for indeterminate transfer under subsection (b). The person shall remain in the receiving facility unless the commissioner denies the application for transfer. If the commissioner denies the application, the chief officer of the receiving facility shall have the person transferred to the sending facility immediately.

(d) A person may be transferred from a state facility to a licensed private facility or from a licensed private facility to a state facility, upon proper application, approval of the sending and receiving facilities, and written notice to the committing court, if the person is committed. Once transferred, the person is lawfully admitted to the receiving facility, and the facility may retain the person under the authority of the admission or order applicable to the facility from which the person was transferred.

33-3-302 [Same section number and basic content as current code]

Upon receipt of a certificate of the Veterans' Administration of the United States that facilities are available for the care or treatment of a person ordered hospitalized pursuant to Chapter 6, Part 5 in any hospital for the care or treatment of persons with mental illness or serious emotional disturbance and that the person is eligible for care or treatment in a veterans' hospital or facility of the agency located in this state, the commissioner may cause the person's transfer to the veterans' hospital or facility of the United States for hospitalization in this state. No person shall be transferred to a veterans' hospital or facility of the United States if the person is confined based on conviction of a criminal offense, or if the person has been acquitted of the charge solely on the ground of mental illness unless prior to the transfer the court originally ordering confinement of the person enters an order for the transfer after appropriate motion and hearing. A person transferred to a veterans' hospital or facility of the United States shall be considered to be hospitalized by the Veterans' Administration of the United States under the original order of hospitalization.

33-3-303 [Same section number and basic content as current code]

(a) The commissioner may provide for and authorize the transportation and transfer from Tennessee to the service recipient's state of residence of a person with mental illness, serious emotional disturbance, or developmental disability who is a resident of a state not party to the Interstate Compact on Mental Health if the nonparty state has reciprocal statutes conferring similar authority and if the service recipient meets the applicable standards for service under Title 33 other than any requirement of being a Tennessee resident.

(b) (1) Subject to the availability of suitable accommodations, a nonresident person with mental illness, serious emotional disturbance, or developmental disability may be hospitalized or admitted under this title for observation, diagnosis and treatment, but in no case for a period longer than thirty (30) days, pending transfer to the state of residence.

(2) However, the commissioner may designate certain nonresident persons with mental illness, serious emotional disturbance, or developmental disabilities, not to exceed a total of one hundred (100), as "commissioner's service recipients," who because of their nonresident status in Tennessee are not entitled to hospitalization or admission in this state, but who, having families residing in Tennessee, may be eligible for psychiatric hospitalization or admission, care and treatment for compassionate reasons.

## Part 4

## Transfers from Department of Correction and Department of Children's Services

33-3-401 [Same section number and basic content as current code]

(a) If the chief officer of a Youth Development Center of the Department of Children's Services determines, on the basis of a written report of a licensed physician or licensed psychologist designated as a health service provider, that a person in the Youth Development Center:

(1) Has serious emotional disturbance, mental illness, or mental retardation, and

(2) Is in need of residential care and treatment for the condition that cannot be provided by the Department of Children's Services and that can be provided at a residential facility of the Department of Mental Health and Developmental Disabilities, the chief officer of the Youth Development Center shall order the person's transfer and shall notify the person of the decision and the reasons in writing not less than twenty-four (24) hours in advance of the proposed transfer.

(b) (1) If the person does not object to the transfer within twenty-four (24) hours of notice of the proposed transfer, the person shall be transferred to the appropriate residential program of the Department of Mental Health and Developmental Disabilities that is designated by the Commissioner of Mental Health and Developmental Disability as having available suitable accommodations. The Department of Children's Services shall retain legal custody of the person after the person has been transferred to an appropriate residential program of the Department of Mental Health and Developmental Disabilities.

(2) If the person objects to the transfer within twenty-four (24) hours of notice of the proposed transfer, the chief officer of the Youth Development Center shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, and the person shall remain in the Youth Development Center pending the decision of the transfer committee.

33-3-402 [Same section number and basic content as current code]

(a) If the director of a facility of the Department of Correction determines, on the basis of a written report of a licensed physician or a licensed clinical psychologist, that a person in the director's custody:

(1) Has mental illness, serious emotional disturbance, or mental retardation, and

(2) Is in need of residential care and treatment for the condition that cannot be provided at an appropriate facility of the Department of Correction and that can be provided at an appropriate residential program of the Department of Mental Health and Developmental Disabilities, the director shall order the person's transfer and shall notify the person of the decision and the reasons in writing not less than twenty-four (24) hours in advance of the proposed transfer.

(b) (1) If the person is competent and waives in writing the right to a transfer hearing, the person shall be transferred to the custody of the commissioner at a secure facility that is designated by the commissioner as having available suitable accommodations.

(2) If the person does not so waive the right to a hearing, the director shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, and the person shall remain in the facility of the Department of Correction pending the decision of the transfer committee.

33-3-403 [Same section number and basic content as current code]

(a) If the director of a facility of the Department of Correction determines, on the basis of a written report of a licensed physician or a licensed psychologist designated as a health service provider, that a person in the director's custody:

(1) Has mental illness or serious emotional disturbance, and

(2) Is in need of emergency residential care and treatment for the condition that cannot be provided at an appropriate facility of the Department of Correction and that can be provided at an appropriate residential program of the Department of Mental Health and Developmental Disabilities, the director shall immediately have the person transferred to the custody of the Commissioner of Mental Health and Developmental Disability at a facility designated by the commissioner.

(b) When a person is transferred from the Department of Correction to the Department of Mental Health and Developmental Disabilities under this section, the chief officer of the receiving facility shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter unless the person is returned to the Department of Correction before the scheduled hearing date.

33-3-404 [Same section number and basic content as current code]

A transfer committee consists of five (5) persons. If the person to be transferred is in the custody of the Department of Children's Services, the Commissioner of Children's Services shall appoint two (2) members of the committee, neither of whom may be the transferring chief officer. If the person to be transferred is in the custody of the Department of Correction, the Commissioner of Correction shall appoint two (2) members of the committee, neither of whom may be the transferring director. The Commissioner of Mental Health and Developmental Disabilities shall appoint three (3) members to review transfers of adults and two (2) members to review transfers of children. The Executive Director of the Tennessee Commission on Children and Youth or the director's designee shall be a member of a transfer committee that reviews transfers of children. The committee members shall serve at the pleasure of the appointing commissioners. The commissioners may appoint alternate committee members.

33-3-405 [Same section number and basic content as current code]

(a) The committee may elect a chair and a vice chair. The committee shall act by majority vote. No member of the committee is disqualified to participate in a hearing by virtue of prior knowledge of the case. The chair may postpone the hearing for a reasonable time upon request of the person whose transfer is proposed to permit that person to obtain counsel and

witnesses. In the hearing, the committee shall receive all relevant evidence. The transferee shall be permitted to speak personally and by counsel and to present witnesses.

(b) Transfer committee proceedings under this part are not governed by the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

33-3-406 [Same section number and basic content as current code]

(a) If the committee determines that the transfer meets the standards for a transfer under this part, it shall approve the transfer. The chair shall immediately give the person written notice of the committee's decision and a summary of the factual basis for the decision and a complaint form for review of the transfer in the circuit court under Part 7 of this chapter.

(b) If the transfer committee determines that the transfer does not meet the standards for a transfer under this part, it shall disapprove the transfer, and if the person has already been transferred, shall order the person returned to the transferring facility. The chair shall immediately give the person written notice of the committee's decision and a summary of the factual basis for the decision.

33-3-407 [Same section number and basic content as current code]

The person shall be transferred five (5) days after the receipt of the committee's notice if such person has not filed a complaint under Part 7 of this chapter. The person may be transferred immediately after receipt of the notice if such person is competent and consents in writing to the transfer.

33-3-408 [Same section number and basic content as current code]

(a) Within five (5) days, excluding Saturdays, Sundays, and legal holidays, after any transfer made without objection by the transferee under § 33-3-401 or § 33-3-402, or any transfer under § 33-3-403, the chief officer of the receiving facility of the Department of Mental Health and Developmental Disabilities shall determine whether the transfer was appropriate under this part. If the transfer was based on mental illness or serious emotional disturbance, the chief officer's decision shall be based on the advice of a licensed physician. If the transfer was based on mental retardation, the chief officer's decision shall be based on the advice of a licensed physician or a licensed clinical psychologist.

(b) (1) If the chief officer determines that the transfer of a person in the custody of the Department of Correction was not appropriate, the chief officer shall immediately transfer the person back to the custody of the Department of Correction.

(2) If the chief officer of the receiving Department of Mental Health and Developmental Disabilities Facility determines that the transfer of a person in the custody of the Department of Children's Services offender was not appropriate, the chief officer shall immediately transfer the person back to the Youth Development Center or other appropriate program designated by the Commissioner of Children's Services.

(3) If the chief officer determines that the transfer was appropriate, the chief officer shall immediately give the person written notice of the decision.

33-3-409 [Same section number and basic content as current code]

(a) If the chief officer of a receiving facility of the Department of Mental Health and Developmental Disabilities or, upon approval by the Commissioner of Mental Health and Developmental Disabilities, the chief officer of a private facility that operates a program for the Department of Mental Health and Developmental Disabilities determines more than five (5) days, excluding Saturdays, Sundays, and legal holidays, after a person has been transferred that a person no longer meets the standards for a transfer under this part or that residential care and treatment in the facility is no longer advisable or beneficial, the chief officer shall order the person's return to the Department of Correction or the Department of Children's Services.

(b) The chief officer shall notify the person of the decision in writing not less than seventy-two (72) hours in advance of the proposed transfer. If the person does not object within seventy-two (72) hours of the notice to the proposed return, the person shall be returned to the Department of Correction or the Department of Children's Services. If the person objects within seventy-two (72) hours of the notice, the chief officer shall convene a transfer committee to review the decision not less than seven (7) days nor more than fourteen (14) days thereafter. The person shall remain at the facility pending the decision of the transfer committee.

(c) If the transfer committee determines that the person no longer meets the standards for a transfer under this part or that residential care and treatment in the facility is no longer advisable or beneficial, it shall approve the transfer.

(d) The decision of a transfer committee approving or disapproving a transfer under this section is final. The judicial remedy and procedures under part 7 of this chapter do not apply to the transfer committee decision.

33-3-410 [Same section number and basic content as current code]

(a) If the chief officer of a private facility that operates a program for the Department of Mental Health and Developmental Disabilities determines that residential care and treatment of a transferee in the facility is no longer advisable or beneficial, the chief officer shall notify the transferee and the Commissioner of Mental Health and Developmental Disabilities of the determination and of the basis for it.

(b) If the commissioner, after receipt of the notice, determines that an emergency exists and that the determination appears to be correct, the commissioner shall order the transfer immediately to a facility of the department. Within seven (7) days after the transfer, the commissioner shall have a transfer committee composed only of three (3) persons appointed by the commissioner hold a hearing to determine whether residential care and treatment of a transferee in the transferring facility is no longer advisable or beneficial. If the committee determines that the chief officer was correct, it shall approve the transfer. Otherwise, the committee shall order the person returned to the transferring facility or to another appropriate facility.

(c) If the commissioner, after receipt of the notice, determines that an emergency does not exist and that the determination appears to be correct, the commissioner shall have a transfer committee composed only of three (3) persons appointed by the commissioner hold a hearing not less than seven (7) nor more than fourteen (14) days after receipt of the notice to determine whether residential care and treatment of a transferee in the transferring facility is no longer advisable or beneficial. If the committee determines that the chief officer was correct, it



shall approve the transfer. Otherwise, the committee shall disapprove the transfer. The person shall remain in the transferring facility until the committee has made its determination.

33-3-411 [Same section number and basic content as current code (a) and (b)]

If a transferee runs away from a Department of Mental Health and Developmental Disabilities Facility or a program that is operated by a private contractor for the department and is taken into custody within thirty (30) days after running away, the transferee shall be returned to the custody of the commissioner at a facility designated by the commissioner. If a transferee runs away from such a facility or program and is taken into custody more than thirty (30) days after running away, the department which initiated the transfer shall designate a facility or program at which the transferee shall be returned to the custody of the transferring department.

33-3-412 [Same section number and basic content as current code]

(a) If the chief officer of a Youth Development Center of the Department of Children's Services determines, on the basis of a written report of a licensed physician or a licensed psychologist designated as a health service provider, that a person in the Youth Development Center:

(1) Has serious emotional disturbance or mental illness, and

(2) Is in need of emergency residential care and treatment for the condition that cannot be provided at the Youth Development Center and that can be provided by an appropriate residential program of the Department of Mental Health and Developmental Disabilities, the chief officer of the Youth Development Center shall immediately have the person transferred to a facility of the Department of Mental Health and Developmental Disabilities designated by the Commissioner of Mental Health and Developmental Disabilities.

(b) When a person in the custody of the Department of Children's Services is transferred to a facility of the Department of Mental Health and Developmental Disabilities under this section, the chief officer of the receiving facility shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, unless the person is returned to the Youth Development Center or other appropriate program of the Department of Children's Services before the scheduled hearing date.

## Part 5

### Judicial Procedures Generally

33-3-501 [Same section number and basic content as current code]

(a) Notwithstanding any other provisions of this title, no person with mental illness, serious emotional disturbance, or developmental disability with respect to whom proceedings for hospitalization or admission under a court order have been commenced shall be released or discharged during the pendency of such proceedings, unless ordered by the court upon application of the person with mental illness, serious emotional disturbance, or developmental disability or of the parent, legal guardian, legal custodian, conservator, spouse or adult next of kin of the person, or upon the report of the chief officer that the person with mental illness, serious emotional disturbance, or developmental disability may be discharged with safety.

(b) This provision does not limit the duties to release persons with mental illness, serious emotional disturbance, or developmental disability imposed by §§ 33-5-302, § 33-5-303, and 33-6-207, and Chapter 6, Parts 3, 4, and 8.

33-3-502 [Same section number and basic content as current code]

(a) In all judicial proceedings under this title the clerk of the court in which the proceedings are held shall keep a careful and accurate record of the proceedings.

(b) (1) Whenever, in a judicial proceeding under this title, a person has been ordered hospitalized or admitted, the clerk of the court shall immediately communicate the action of the court to the chief officer of the hospital or developmental center.

(2) A copy of the court order shall be forwarded to the hospital or developmental center, along with a personal and family history of the person with mental illness, serious emotional disturbance, or developmental disability that the clerk shall complete, and any other forms or documents required by rules of the department.

(3) The department shall furnish a supply of all necessary forms to the clerks of the various courts.

(c) The clerk may communicate to the chief officer of the hospital or developmental center the cost that shall be included in the costs and expenses of the case.

33-3-503 [Same section number and basic content as current code]

(a) The reasonable costs incurred in judicial proceedings under this title shall be paid by the subject of the proceedings or the subject's estate or by the subject's responsible relatives and shall be a charge upon the estate of those liable.

(b) The reasonable costs incurred in judicial proceedings filed by the chief officer of a department facility to have a guardian or conservator appointed under Title 34, shall be paid by the subject of the proceedings in conformity with that law.

(c) (1) If a subject of proceedings under this title is indigent and does not have responsible relatives able to pay such costs or if a subject of guardianship or conservatorship proceedings filed by the chief officer of a department facility is indigent under the guardianship or conservatorship law under Title 34, the state shall pay such costs.

(2) For this purpose, the supreme court shall prescribe by rule the nature of costs for which reimbursement may be allowed, and limitations on and conditions for reimbursement of costs as it deems appropriate in the public interest, subject to the provisions of this section. Such rules shall also specify the form and content of applications for reimbursement of costs to be filed under this section. No reimbursement to an attorney under this subsection shall exceed one hundred dollars (\$100) for each day of in-court proceedings, with a maximum compensation for any one (1) proceeding of five hundred dollars (\$500). The administrative director of the courts shall administer the provisions of this subsection and rules adopted hereunder, and shall audit and review all applications for reimbursement of costs. Upon finding payment to be in order, the administrative director of the courts shall process the payment from money appropriated for that purpose.

(d) In any case where the subject of the proceedings is judicially determined not to be involuntarily hospitalized, committed, or transferred, the costs may be taxed against the person who seeks hospitalization, commitment, or transfer of the subject of the proceedings.

(e) The court may require any petitioner to file an undertaking with surety to be approved by the court in an amount the court considers proper to assure the payment of costs and expenses and to save harmless the respondent by reason of costs incurred, including attorney's fees, if any, and damages suffered by the respondent as a result of the action.

(f) Witnesses subpoenaed to appear in proceedings held under this title shall be paid fees and mileage as provided by law for witnesses generally.

33-3-504 [Same section number and basic content as current code]

A physician, psychologist, person designated by the commissioner under § 33-6-427(b), or other professional who makes an application or conducts an examination under this title is a competent and compellable witness at any judicial proceeding conducted under it.

#### Part 6

##### Judicial Procedures for Residential Treatment

33-3-601 [Same section number and basic content as current code]

This part governs only proceedings under statutes that designate use of this part.

## 33-3-602 [Current code]

A complaint for commitment shall be sworn and shall show that the defendant is subject to involuntary care and treatment under the commitment statute on which the complaint is based and shall be accompanied either by a sworn statement by the plaintiff that the defendant has refused to be examined by certifying professionals or by certificates of need as required by the commitment statute showing:

- (1) That the certifying professionals have examined the defendant within three (3) days of the date of the certificate;
- (2) That they are of the opinion that the defendant is subject to involuntary care and treatment under the commitment statute; and
- (3) The factual foundation for their conclusions on each item of the commitment statute.

## 33-3-603 [Current code]

(a) The complaint may be filed in a county in which the defendant resides or may be found. If the defendant is in a developmental center, hospital, or treatment resource, the complaint shall be filed where the person is, and jurisdiction of the proceedings may be transferred for good cause to the court of residence. This venue requirement does not apply to complaints filed in accordance with § 33-7-301 or § 33-7-303.

(b) Except as otherwise expressly provided in this title, only the following courts have jurisdiction over the complaint:

- (1) Chancery court;
- (2) Circuit court;
- (3) Juvenile courts in proceedings held by judges who are lawyers or by referees;
- (4) Probate court in counties having a population of more than four hundred thousand (400,000) according to the 1980 Federal Census or any subsequent Federal Census; and
- (5) Court of general sessions in counties having a metropolitan form of government and having a population of more than four hundred thousand (400,000) according to the 1990 Federal Census or any subsequent Federal Census; provided, that the jurisdiction conferred by this subdivision is conferred only for petitions concerning mandatory outpatient treatment.

## 33-3-604 RESERVED

## 33-3-605 [Same section number and basic content as current code]

Upon receipt of a complaint, the clerk shall have a copy of the complaint with a notice of the time and place of the hearing, the defendant's right to counsel, and the standards for

commitment that apply to the proceeding served on the defendant by personal service if the person is at liberty or by mail if the person is not at liberty and shall send a copy by mail to the defendant's attorney, the chief officer of a facility in which the defendant is, and the defendant's legal guardian, legal custodian, or conservator, if any, and to the spouse, parent, or adult next of kin if there is no guardian or conservator. If mailing addresses are unknown, notice may be given by any other reasonable means.

33-3-606 [Current code]

The hearing shall be held as soon as possible but not more than twenty (20) days after the complaint was filed except that the court may continue the hearing for up to ten (10) days for good cause and may continue the hearing for as long as necessary to impanel a jury if the defendant demands a jury trial.

33-3-607 [Current code]

If the complaint includes or is accompanied by a sworn statement by the plaintiff that the defendant has refused to be examined by certifying professionals and the court finds that probable cause exists to believe that the defendant is subject to involuntary care and treatment and has refused to be examined by a certifying professional, the court shall order a law enforcement officer to take the defendant into custody for an examination by two (2) certifying professionals who meet the requirements of the commitment statute. The defendant may be detained for the period required to complete the examinations, but not more than forty-eight (48) hours. Upon completion of the examinations, the person shall be released, and the certifying professionals shall report their findings to the court. For good cause the court may order further examination, including independent examination, as to the mental condition of the person and may continue the hearing until the report of the examination is made to the court.

33-3-608 [Current code]

The defendant's attorney shall notify the court of the representation immediately after accepting it. If the defendant does not employ an attorney, the court shall appoint an attorney to represent the defendant not less than five (5) days in advance of the hearing. An attorney representing the defendant shall not serve as guardian *ad litem*. If the court determines that the defendant is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the defendant's guardian *ad litem*.

33-3-609 [Current code]

Either party may demand a jury trial on the issues.

33-3-610 [Same section number and basic content as current code]

The hearing shall be conducted in a place where the court is usually held or in a physical setting not likely to have a harmful effect on the mental condition of the defendant. No hearing shall be conducted in a jail or other custodial facility for the detention of persons charged with or convicted of criminal offenses. The court shall determine the place of the hearing and may exclude the public from the hearing on motion of the defendant if the interests of the defendant and the public would best be served by exclusion.

## 33-3-611 [Current code]

The chief officer of a facility in which the defendant is found shall arrange for suitable transportation of the person to the court where the hearing is to be held except that the sheriff shall provide transportation if the defendant has been committed in connection with criminal charges.

## 33-3-612 [Same section number and basic content as current code]

(a) The court shall give the defendant, the plaintiff, and all other persons to whom the clerk is required to give notice of the proceeding an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The defendant shall be present at the hearing unless the defendant waives the right to be present in writing. If the defendant's attorney shows that the defendant's physical health would be endangered by being at the hearing, the court may order a continuance until the risk is terminated, and the defendant shall not be discharged during the continuance unless the hospital determines that the defendant no longer meets the commitment standards applicable in the hearing that has been continued. If the court determines that the defendant's conduct at the hearing is so violent or otherwise disruptive that it creates a serious risk of harm to the defendant or others at the hearing or so disrupts the proceedings that they cannot be conducted in a proper manner, the court may order the defendant restrained or excluded to the extent necessary to the proper conduct of the proceedings. If the defendant is not present at or is excluded from the hearing, the court shall make a written finding of fact as to why the hearing is held in defendant's absence.

## 33-3-613 [Current code]

The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure.

## 33-3-614 [Current code]

If the names of examining professionals who certified the person's need for care and treatment did not accompany the complaint, they shall be made available to the defendant and counsel prior to the hearing.

## 33-3-615 [Current code]

(a) The testimony of a certifying professional may be made by deposition or affidavit only with the consent of the defendant's counsel. If such testimony is given by deposition or affidavit, the court shall make a specific finding of fact that the defendant or the defendant's counsel has consented, and the defendant's right of cross-examination of the certifying professional shall be preserved.

(b) If consent is not given for testimony by deposition or affidavit, a professional who would be qualified as a certifying professional under the commitment statute may testify instead of a certifying professional if the person has examined the defendant within ten (10) days of the hearing, and the person shall testify as to each point of the commitment statute.

## 33-3-616 [Current code]

No defendant shall be detained at a jail or other custodial facility for the detention of persons charged with or convicted of criminal offenses, unless the defendant is under arrest for the commission of a crime.

33-3-617 [Current code]

IF AND ONLY IF

(1) The certificates required by law have been filed with the court showing the need for involuntary care and treatment, AND

(2) The court finds on the basis of clear, unequivocal and convincing evidence that the defendant is subject to involuntary care and treatment under the statute under which the commitment is sought,

THEN

(3) The court shall commit the person under the commitment statute on which the complaint is based.

33-3-618 [Current code]

(a) If the court does not commit the defendant to involuntary care and treatment, the court shall enter an order dismissing the proceedings for involuntary care and treatment.

(b) If the defendant is being held involuntarily under this title, the court shall order the immediate release of the defendant unless the defendant is in the custody of the chief officer of a facility under another law or is being held on charges of the commission of a criminal offense or of juvenile delinquency.

33-3-619 [Same section number and basic content as current code]

If a commitment to involuntary care and treatment is entered, the certifying professionals shall disclose to the hospital, treatment resource, or developmental center that admits the person on its request information they have about the person, including diagnosis, past treatment, and anything else relating to the person's condition that may aid the facility in providing appropriate care and treatment.

33-3-620 [Current § 33-3-623]

Appeals from proceedings for involuntary care and treatment shall be taken under the general law governing appeals.

## Part 7

### Judicial Procedures for Review of Transfers

33-3-701 [Same section number and basic content as current code]



Judicial proceedings for the determination of whether a person may be transferred to a facility or continues to be eligible for treatment in a facility to which that person was transferred under Part 3 or 4 of this chapter, may be commenced by filing a complaint in circuit court where the receiving department facility is located. The person or a parent, legal guardian, legal custodian, conservator, spouse or responsible relative of the person may initiate the review proceedings.

33-3-702 [Same section number and basic content as current code]

Upon receipt of a complaint the clerk shall mail notice of the filing and of the time and place of the hearing to the transferee and the plaintiff and shall mail notice and a copy of the complaint to the chief officers of the transferring facility and of the receiving facility and to the transferee's spouse, parent, responsible relative, legal guardian, legal custodian, or conservator. If mailing addresses are unknown, notice may be given by any other reasonable means.

33-3-703 [Current code]

The hearing shall be held as soon as possible after the complaint was filed. At the request of counsel for the transferee the hearing shall be continued for up to ten (10) days for preparation of the case.

33-3-704 [Current code]

The transferee's attorney shall notify the court of the representation immediately after accepting it. If the transferee or others on the transferee's behalf do not employ an attorney for the transferee, the court shall appoint an attorney to represent the transferee. An attorney representing the transferee shall not serve as guardian *ad litem*. If the court determines that the transferee is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the transferee's guardian *ad litem*.

33-3-705 [Current code]

Either party may demand a jury trial on the issues.

33-3-706 [Current code]

The hearing shall be conducted in a place where the court is usually held or in a physical setting not likely to have a harmful effect on the mental condition of the transferee. No hearing shall be conducted in a jail or other custodial facility for the detention of persons charged with or convicted of criminal offenses unless the transferee is being held in connection with such offenses. The court shall determine the place of the hearing and may exclude the public from the hearing on motion of the transferee if the interests of the transferee and the public would best be served by exclusion.

33-3-707 [Same section number and basic content as current code]

(a) The court shall give the plaintiff, the transferee, and all other persons to whom the clerk is required to give notice of the proceeding an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The transferee shall be present at the hearing unless the transferee waives the right to be present in writing. If the transferee's attorney shows that the transferee's physical health would be endangered by being at the hearing, the court may order a continuance until the risk is terminated. If the court determines that the transferee's conduct at the hearing is so violent or otherwise disruptive that it creates a serious risk of harm to the transferee or others at the hearing or so disrupts the proceedings that they cannot be conducted in a proper manner, the court may order the transferee restrained or excluded to the extent necessary to the proper conduct of the proceedings. If the transferee is not present at or is excluded from the hearing, the court shall make a written fact finding as to why the hearing is held in the transferee's absence.

33-3-708 [Current code]

The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure.

33-3-709 [Current code]

The testimony of an examining professional may be made by deposition or affidavit only with the consent of the transferee's counsel. If the testimony is given by deposition or affidavit, the court shall make a specific finding of fact that the transferee's counsel has consented, and the transferee's right of cross-examination of the examining professional shall be preserved. If consent is not given for testimony by deposition or affidavit, a professional who would be qualified as an examining professional under the commitment statute may testify instead of an examining professional if the person has examined the transferee within ten (10) days of the hearing.

33-3-710 [Current code]

If the court finds by a preponderance of the evidence under the transfer statute that the transferee is subject to transfer or continues to be eligible for care and treatment in a facility to which the person was transferred, the court shall so declare. If the court finds otherwise, the court shall order the person's transfer from the receiving facility to the transferring facility or shall order that the person not be transferred to the proposed facility. Findings of a jury with respect to the transfer criteria shall be reported by special verdict.

33-3-711 [Current code]

No complaint under this part may be filed by or on behalf of a transferee within six (6) months after a hearing on a previous complaint under this part.

## Part 8

### Habeas Corpus

33-3-801 [Similar to current § 33-3-104(9)]

Any person with mental illness, serious emotional disturbance, or developmental disability in a public or private residential facility for persons with mental illness, serious emotional disturbance, or developmental disability is entitled to file for a writ of habeas corpus

upon petition by the person with mental illness, serious emotional disturbance, or developmental disability or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which the person with mental illness, serious emotional disturbance, or developmental disability is detained.

33-3-802 [Similar to current § 33-3-801(a)]

During any proceeding to determine whether to release a person with mental illness, serious emotional disturbance, or developmental disability seeking release by means of a writ of habeas corpus under this part or § 33-3-101, or otherwise, the court shall also, if the issue is raised in the responsive pleading, determine whether the person seeking release presently has mental illness, serious emotional disturbance, or developmental disability and is in need of service.

33-3-803 [Similar to current § 33-3-801(b)]

If the court determines that the person was not admitted or committed pursuant to the provisions governing procedures under this title or was not afforded due process of law, but that the person presently has a mental illness, serious emotional disturbance, or a developmental disability and because of the condition poses a likelihood of serious harm to the person or others as determined under § 33-6-501, the court may order the person returned to the hospital or developmental center where the person was located on the date of filing the petition for not more than fifteen (15) days, exclusive of Saturdays, Sundays or holidays if and only if a petition under §§ 33-5-402--33-5-403 or Chapter 6, Part 5 is filed immediately and is disposed of within fifteen (15) days of the court's order, exclusive of Saturdays, Sundays or holidays, unless the case is continued on request of petitioner; otherwise the person shall be released.

33-3-804 [Similar to current § 33-3-801(c)]

If the court ordering the discharge is not the court that ordered the commitment or admission, the court shall transmit a certified copy of the order to the court that ordered the commitment or admission. Upon receipt of the copy, the court that ordered the commitment or admission shall enter an order finding that the person has been discharged by order of the court that issued the writ of habeas corpus.

## Part 9

### Violations of Service Recipient Rights

33-3-901 [Derived from current § 33-3-102]

(a) Any person who:

(1) Without probable cause to believe a person has developmental disability, mental illness, or serious emotional disturbance, causes or conspires with or assists a third person to cause the hospitalization or admission of the person under this title, or

(2) Causes or conspires with or assists another to cause the denial to a person of any right accorded to a person under this title, commits a Class E felony.

(b) Any person who:

(1) Without probable cause to believe a person has developmental disability, mental illness, or serious emotional disturbance executes a petition, application, or certificate under this title, or otherwise secures or attempts to secure the apprehension, detention, hospitalization, admission, or restraint of the person, or

(2) Knowingly makes any false certificate or application under Title 33, commits a Class E felony.

(c) The commissioner or the chief officer of any hospital, developmental center, or treatment resource acting pursuant to this title shall be entitled to rely in good faith upon the representations made for admission by any person or any certification with respect to any person made by a professional authorized to provide certificates under this title or any court.

(d) All persons acting in good faith, reasonably and without negligence in connection with the preparation of petitions, applications, certificates or other documents or the apprehension, detention, discharge, examination, transportation or treatment of a person under this title shall be free from all liability, civil or criminal, by reason of such acts.

33-3-902 [Current § 33-3-103]

It is a Class C misdemeanor for any person knowingly to furnish false information for the purpose of securing the hospitalization or admission of any person to a facility for persons with developmental disability, mental illness, or serious emotional disturbance.

33-3-903 [Derived from current § 33-3-106(e)]

Any employee of a service provider who has sexual intercourse with a service recipient of the service provider other than the employee's spouse or commits sexual battery on a service recipient, knowing or having reason to believe that the service recipient is a service recipient of the service provider, is subject to discharge for that conduct.

33-3-904 [Similar to current § 33-3-106(b)-(d)]

(a) A person who:

(1) Counsels, causes, influences, aids or assists a service recipient with mental illness, serious emotional disturbance, or developmental disability to leave a hospital or developmental center without authority after the service recipient was admitted under court order,

(2) Harbors or conceals a service recipient with mental illness, serious emotional disturbance, or developmental disability who has left a hospital or developmental center without authority,

(3) Incites a service recipient with mental illness, serious emotional disturbance, or developmental disability, while the service recipient is admitted to a hospital or developmental center, to hurt or injure another person anywhere, or

(4) Gives or sells to a service recipient with mental illness, serious emotional disturbance, or developmental disability in a hospital or developmental center, whether on the premises of the facility or elsewhere, knowing such person to be a person with mental illness, serious emotional disturbance, or developmental disability, any firearms, intoxicating drinks, drugs, or any other harmful articles, commits a Class E felony.

(b) A hospital or developmental center employee or official who receives from a person with mental illness, serious emotional disturbance, or developmental disability anything of value as a gift or for a consideration commits a Class C misdemeanor.

(c) A person, who aids or abets in the commission of any of the foregoing offenses or aids or abets in a prohibited attempt, is guilty as if the person were a principal and shall be punished as a principal.

## CHAPTER 4

### SPECIAL RULES FOR RESIDENTIAL SERVICE RECIPIENTS

#### Part 1

#### Rights of Residential Service Recipients

33-4-101 [Current § 33-3-104(1)]

A person with mental illness, serious emotional disturbance, or developmental disability is entitled to:

- (1) Receive visitors during regular visiting hours, and
- (2) Communicate, orally or by sending and receiving uncensored mail, with the service recipient's family, attorney, personal physician, minister, and the courts.

All other incoming mail or parcels may be read or opened before being delivered to a service recipient, if the chief officer of the facility believes the action is necessary for the physical or mental health of the service recipient who is the intended recipient. Mail or other communication which is not delivered to the service recipient for whom it is intended shall be returned immediately to the sender. The chief officer may make reasonable rules regarding visitors, visiting hours, and the use of communication resources.

## 33-4-102 [Derived from current § 33-3-104 (2)]

A person with mental illness, serious emotional disturbance, or developmental disability shall be provided services or supports, to the extent that facilities, equipment and personnel are available, in accordance with community standards. The chief officer shall keep records detailing services or supports received by each person. Records shall be preserved by the chief officer until the person has been discharged but not less than ten (10) years. The records may be generated, maintained, or transferred in whole or in part to any recording medium that assures accurate preservation of the record. If a record is transferred from one medium to another, the source record may be destroyed upon determination by the chief officer that the reproduced record is true and correct and will be accurately preserved. The reproduced record is deemed to be the original record.

## 33-4-103 [Current § 33-6-107]

If a person is admitted to a hospital, developmental center, or other residential service on the application of any person other than the person's parent, legal guardian, legal custodian, conservator, spouse or adult next of kin, the chief officer shall immediately notify the person's parent, legal guardian, legal custodian, conservator, spouse, or adult next of kin, if known.

## 33-4-104 [Current § 33-3-105(b)]

In considering an applicant for admission, if it appears that the person has a physical disorder that requires immediate medical care and the admitting facility cannot appropriately provide the medical care, the person shall be taken first to a physician or hospital for treatment of the medical condition. When the person has received appropriate medical attention and treatment, the person may then be transported to the appropriate facility for treatment of the person's mental illness, serious emotional disturbance, or developmental disability.

## 33-4-105 [Derived from current § 33-3-104(8) and 33-3-111]

(a) Upon admission of a person with mental illness, serious emotional disturbance, or developmental disability to a hospital, developmental center, or other residential service, the chief officer shall provide the person a written statement outlining in simple, non-technical language all release procedures and all other rights of persons under this title. The chief officer shall have the service recipient informed in language understood by the service recipient, including the service recipient's native language or sign language, if appropriate. The chief officer also shall provide the written statement to the person's parent, legal guardian, legal custodian, conservator, spouse or other nearest known adult relative. The chief officer shall provide reasonable means and arrangements for assisting the person in making and presenting requests for release, including petitions to the proper court.

(b) The service recipient shall sign on the line for signature to acknowledge having been informed of the service recipient's rights orally and in writing. The service recipient's signature shall be acknowledged in writing by at least one (1) disinterested witness.

## 33-4-106 [Derived from current § 33-3-106 (a) (1),(2),(3)]

(a) If a person admitted under court order leaves a hospital, developmental center, or other residential service without authority, the chief officer shall immediately notify the court. If the person is taken into custody, the person may be returned to the facility upon an order by the

court. After thirty (30) days absence the person may be dropped from the facility's records. A return after thirty (30) days absence is a new admission.

(b) The committing court shall be notified of the policy regarding temporary leave, and the court shall be given an opportunity to register its objection to granting temporary leave. An objection by the court does not prohibit authorization of leave. Temporary leave is not a discharge from the facility.

33-4-107 [Current § 33-3-109]

(a) If a person is proposed to be committed to a private facility under this title, at least one (1) of the required certificates of need shall be from a professional who is not an employee of the private facility.

(b) For purposes of this section, employment as a faculty member by a school of medicine at a university or college associated with a hospital shall not constitute employment at a private facility.

33-4-108 [Similar to current § 33-3-110]

(a) A certificate of need for commitment for care and treatment of a person with mental illness, serious emotional disturbance, or developmental disability is not valid for any purpose unless it is based on personal observation and examination of the person made by the professional not more than three (3) days prior to the making of the certificate. The certificate shall state the facts and reasoning on which the opinions and conclusions are based.

(b) The execution of a certificate concerning the mental condition of a person by a professional who has not personally observed and examined the person is a Class E felony.

33-4-109 [Derived from current § 33-3-107]

(a) Upon the death of a person admitted to a facility under court order under this title, the chief officer of the facility shall mail written notice of the cause of death to the court which entered the order. Upon the death of a person who was admitted voluntarily, the chief officer shall notify the next of kin of the cause of death. The notice shall be mailed within ten (10) days of the death.

(b) Notice of a death shall also be given promptly to the person's next of kin and legal guardian, legal custodian, or conservator. The administrator, executor or personal representative of the deceased person, or if there is none, one (1) or more of the heirs at law or next of kin, shall be notified by registered mail of the deceased's personal property at the facility at the time of death. Notice to an administrator, executor or personal representative shall be directed to the probate court of the county in which that person is qualified to administer the estate of the deceased.

(c) Property left by the deceased person in the facility shall be disposed of pursuant to subsection (e) if, after diligent search and inquiry, none of the persons required to be notified can be found and notified or if the persons notified do not open the estate or otherwise proceed to dispose of the estate in a lawful manner.



(d) If a person is discharged and leaves personal property in the facility, the chief officer shall promptly notify the person by registered mail addressed to the person's last known address that the property has been left and is subject to sale under subsection (e) if not claimed.

(e) The chief officer shall keep the deceased or discharged person's personal property for six (6) months if it is not claimed. The chief officer shall then sell the property, with the approval of the commissioner, and deposit the proceeds in a fund, maintained under the supervision of the chief officer, for the benefit of needy service recipients.

## Part 2

### Employees as Guardians and Conservators in State Facilities

#### 33-4-201 [Similar to current § 33-3-901]

The commissioner shall designate employees of the department whom courts may appoint, regardless of whether they reside in the same county as the ward, as legal guardian or conservator for a service recipient in a state facility under Title 34 if the court determines that no other person or legally qualified organization will serve for the service recipient and that it is for the best interests of the service recipient that the person be appointed.

#### 33-4-202 [Similar to current § 33-3-907]

An employee appointed under this part as legal guardian, conservator, or trustee for a person shall have sufficient background to understand the person's mental illness, serious emotional disturbance, or developmental disability. Accepting an appointment may not be made a condition of employment unless such duties are a normal part of the employee's duties and there is no conflict of interest. No employee may be appointed as legal guardian, conservator, or trustee of a person who is in the facility in which the employee works.

#### 33-4-203 [Current § 33-3-902]

If the total value of the assets which are turned over to an employee for a ward does not exceed five thousand dollars (\$5,000) exclusive of the burial fund, the court shall not require a bond.

#### 33-4-204 [Similar to current § 33-3-903]

An employee serving as legal guardian or conservator under this part may serve under these provisions only so long as the employee continues to be an employee of the department and for up to ninety (90) days after the ward leaves the state facility.

#### 33-4-205 [Similar to current § 33-3-904(a)]

All funds received by a legal guardian or conservator appointed under this part shall be handled as state funds, be accountable as all other state funds, and be audited annually by the state. All earnings on the funds shall inure to the benefit of the ward. The department shall file a copy of the annual audit with the appointing court.

#### 33-4-206 [Similar to current § 33-3-904(b)]

All other assets received by a legal guardian or conservator appointed under this part shall be handled as state property except that the legal guardian or conservator may dispose of the assets in the exercise of the appointment free of laws governing the disposition of state property and shall keep a record of the disposition of all the property and the reason for the disposition.

33-4-207 [Similar to current § 33-3-904(c)]

Upon termination of the guardianship or conservatorship, all assets remaining in the estate shall be paid to the ward or to the ward's legal representative.

33-4-208 [Similar to current § 33-3-905]

An employee serving as legal guardian or conservator shall file the annual report required by Title 34 with the appointing court on a form approved by the commissioner.

33-4-209 [Similar to current § 33-3-906]

(a) The commissioner may designate employees of the department to serve as trustees for service recipients if the terms of the trust have been approved in writing by the commissioner and the Attorney General.

(b) All assets, funds, and other property held as a part of the corpus of trust and income from the trust shall be audited annually by the state.

33-4-210 [Similar to current § 33-3-908]

An employee who attempts to coerce a legal guardian, conservator, or trustee serving under this part to take any particular action as legal guardian, conservator, or trustee shall be dismissed.

**CHAPTER 5****DEVELOPMENTAL DISABILITY SERVICES**

## Part 1

## Service System

## 33-5-101 [NEW]

Services to persons with developmental disabilities are governed generally by Title 33, including Chapters 1--4, 7, 8 and 9.

## 33-5-102 [NEW]

Persons with developmental disabilities based on conditions other than mental retardation are eligible for direct service under this part March 1, 2002. Persons with mental retardation are eligible for direct service under this part on March 1, 2001.

## 33-5-103 [NEW]

If a person has a developmental disability solely on the basis of having a mental illness or serious emotional disturbance, the person is not eligible to have services or supports provided for the developmental disability primarily under this chapter.

## 33-5-104 [NEW]

Within the limits of available services, the department may serve persons who have conditions that would constitute a developmental disability except that the disability occurred after the age of twenty-two (22).

## 33-5-105 [NEW]

A person is eligible for service and support under this chapter on the basis of mental retardation only if the assessment that the person has mental retardation takes into account:

(1) Cultural and linguistic diversity as well as differences in communication and behavioral factors;

(2) Whether the person's limitations in adaptive skills occur in the context of community environments typical of the person's age peers and is indexed to the person's individualized needs for supports;

(3) Specific adaptive limitations often coexist with strengths in other adaptive skills or other personal capabilities; and

(4) With appropriate supports over a sustained period, the life functioning of a person with mental retardation will generally improve.

## 33-5-106 [Derived from current § 33-5-101(a)]

A person with a developmental disability, a parent or legal guardian of a child with developmental disability, or conservator of a person with a developmental disability, referred to as the applicant, may apply to the department through its designated entities for services and supports that they provide directly or by contract. The designated entity shall inform the applicant about all options for services and supports. When services and supports appropriate for the applicant are not available, the designated entity shall notify the applicant in writing of the basis on which the decision was made, possible service options, the prospects for obtaining service, and the time estimated before the service may be available. The applicant shall be notified periodically and in a timely manner of the status of the application. Based upon additional information, change in status may be determined by the designated entity.

33-5-107 [Derived from current § 33-5-101(b)(4)]

If and only if no suitable alternative provider is available, the chief officer of a department facility may authorize non-residential services and supports of the developmental center to persons with developmental disabilities. A person with a developmental disability, a parent or legal guardian of a child with a developmental disability, or the conservator of a person with a developmental disability may request non-residential services and supports. The chief officer may, in the best interests of the person, discontinue the non-residential services and supports of a person at any time.

## Part 2

### Family Support

33-5-201 [Similar to current § 33-5-402]

As used in this part, unless the context otherwise requires:

(1) "Council" means the state family support council appointed under § 33-5-208;

(2) "Family" means a unit that consists of either a person with a severe or developmental disability and the parent, relative, or other care giver who resides in the same household or a person with a severe or developmental disability who lives alone without such support;

(3) "Family support" means goods and services needed by families to care for their family members with a severe or developmental disability and to enjoy a quality of life comparable to other community members;

(4) "Family support program" means a coordinated system of family support services administered by the department directly or through contracts;

(5) "Severe disability" means a disability that is functionally similar to a developmental disability but occurred after the person was twenty-two (22) years old; and

(6) "State family support council" means the council established by the department to carry out the responsibilities specified in this part.

33-5-202 [Similar to current § 33-5-401]

(a) The policy of the state is that persons with severe or developmental disabilities and their families be afforded supports that emphasize community living and enable them to enjoy typical lifestyles.

(b) Programs to support families shall be based on the following principles:

(1) Families and individuals with severe or developmental disabilities are best able to determine their own needs and should be empowered to make decisions concerning necessary, desirable, and appropriate services and supports;

(2) Families should receive the support necessary to care for their relatives at home;

(3) Family support is needed throughout the life span of the person who has a severe or developmental disability;

(4) Family support services should be sensitive to the unique needs, strengths, and values of the person and the family, and should be responsive to the needs of the entire family;

(5) Family support should build on existing social networks and natural sources of support in communities;

(6) Family support services should be provided in a manner that develops comprehensive, responsive, and flexible support to families as their needs evolve over time;

(7) Family support services should be provided equitably across the state and be coordinated across the numerous agencies likely to provide resources and services and supports to families; and

(8) Family, individual, and community-based services and supports should be based on sharing ordinary places, developing meaningful relationships, learning things that are useful, and making choices as well as increasing the status and enhancing the reputation of persons served.

33-5-203 [Similar to current § 33-5-404]

The primary focus of the family support program is supporting:

(1) Families with children with a severe or developmental disability, school age and younger;

(2) Adults with a severe or developmental disability who choose to live with their families; and

(3) Adults with a severe or developmental disability who are residing in the community in an unsupported setting (not a state or federally funded program).

33-5-204 [Current § 33-5-405]

The contracted agency shall be responsible for assisting each family for whom services and support will be provided in assessing their needs and shall prepare a written plan with the person and family. The needs and preferences of the family and individual will be the basis for determining what goods and services will be made available within the resources available.

33-5-205 [Current § 33-5-406]

The family support services included in this program include, but are not limited to, family support services coordination, information, referral, advocacy, educational materials,

emergency and outreach services, and other individual and family-centered assistance services, such as:

- (1) Respite care;
- (2) Personal assistance services;
- (3) Child care;
- (4) Homemaker services;
- (5) Minor home modifications and vehicular modifications;
- (6) Specialized equipment and maintenance and repair;
- (7) Specialized nutrition and clothing and supplies;
- (8) Transportation services;
- (9) Health-related costs not otherwise covered;
- (10) Licensed nursing and nurses aid services; and
- (11) Family counseling, training and support groups.

33-5-206 [Similar to current § 33-5-407]

As a part of the family support program, the contracted agency shall provide service coordination for each family that includes information, coordination, and other assistance as needed by the family.

33-5-207 [Similar to current § 33-5-408]

The family support program shall assist families of adults with a severe or developmental disability in planning and obtaining community living arrangements, employment services, and other resources needed to achieve, to the greatest extent possible, independence, productivity, and integration into the community.

33-5-208 [Similar to § 33-5-409]

The commissioner shall appoint a state family support council comprised of fifteen (15) members, of whom at least a majority shall be persons with a severe or developmental disability or their parents or primary care givers. The council shall have one (1) representative from each development district of the state, one (1) representative of the Developmental Disabilities Council, one (1) representative of the Tennessee Disability Coalition, one (1) representative of the Community Rehabilitation Agencies of Tennessee, and one (1) representative of a center for independent living. The commissioner shall appoint two (2) at-large members for the department.

33-5-209 [Similar to current § 33-5-410]

The department shall participate with the state family support council and shall adopt policies and procedures regarding:

- (1) Development of appropriations requested for family support;
- (2) Program specifications:
  - (A) Criteria for program services;
  - (B) Methodology for allocating resources to families within the funds available;
  - (C) Eligibility determination and admissions;
  - (D) Limits on benefits;
- (3) Coordination of the family support program and the use of its funds equitably throughout the state, with other publicly funded programs, including Medicaid;
- (4) Resolution of grievances filed by families pertaining to actions of the family support program, and an appeals process;
- (5) Quality assurance; and
- (6) Annual evaluation of services, including consumer satisfaction.



## 33-5-210 [Current § 33-5-411]

The state family support council shall meet at least quarterly. The council shall participate in the development of program policies and procedures, and perform other duties as are necessary for statewide implementation of the family support program. All reimbursement for travel expenses shall be in conformity with the comprehensive travel rules.

## 33-5-211 [Derived from current § 33-5-412]

The department shall administer the family support services program and shall establish annual benefit levels per family served. Implementation of this part and the program and annual benefit levels, or any portion of the program or benefits levels, are contingent upon annual line item appropriation of sufficient funding for such programs and benefits.

## Part 3

## Residential Admission

## 33-5-301 [Derived from current § 33-5-101(b)]

(a) For the purposes of this part, unless the context otherwise requires:

(1) "Emergency respite admission" means an admission for up to forty-five (45) days authorized due to an emergency situation which results in the temporary inability of the person who has the care, custody, and control of a person with developmental disability to provide proper care, custody, and control;

(2) "Regular voluntary admission" means an admission authorized by an admission review board for a specified period of time;

(3) "Respite admission" means an admission for up to forty-five (45) days authorized solely for the purpose of providing a respite for the person having responsibility for the care, custody, and control of a person with developmental disability; and

(4) "Short-term training admission" means an admission authorized by a written agreement between a developmental center and an applicant that the center provide services and supports for a person with developmental disability to learn how to perform a certain function or functions for a specified period of time not exceeding six (6) months at the end of which the center will discharge the person with developmental disability to the care, custody, and control of the applicant.

(b) Under department rules the chief officer of a developmental center, subject to the availability of suitable accommodations and the absence of a less restrictive alternative, may admit for diagnosis, care, training and treatment:

(1) A person with developmental disability who applies for voluntary admission and does not lack capacity to apply under § 33-3-218,

(2) A child with developmental disability whose parent or legal guardian applies for voluntary admission, or

(3) An adult whose conservator applies for voluntary admission.

The Departments of Human Services and Children's Services may apply for respite and emergency respite admission on behalf of a person with developmental disability who is in their custody. Admissions to a developmental center under respite, emergency respite, or short-term training admission, or any combination thereof shall not exceed two hundred and twenty-five (225) days within a twelve-month period from the first day of admission in any of the categories. A respite admission, emergency respite admission, short-term training admission, or combination of such admissions shall not be used to circumvent appearance before the admission review board when regular voluntary admission is actually sought or appropriate. No regular voluntary admission shall be based on the premise that it is for a lifetime.

(c) The admission committee of the developmental center shall informally review a person's emergency respite admission within seven (7) days after the person is admitted. If the review is not done, the admission review board of the center shall hold a hearing to review the propriety of the admission as in the case of regular voluntary admissions and shall make its decision within twenty-five (25) days after the admission.

(d) Upon receipt of an application for admission, the developmental center shall evaluate the person with developmental disability to assess the person's need for services and supports and the least restrictive alternative available to provide appropriate services and supports to the person. If the evaluation results in a recommendation for a regular voluntary admission and there is an available suitable accommodation, the developmental center will report its findings and recommendations to the admission review board.

33-5-302 [NEW; derived from 33-5-101(b)(3) and 33-6-108(d)]

The chief officer shall cause each person admitted under § 33-5-301 or transferred under § 33-3-301 or Chapter 3, Part 4 of this title to be evaluated as often as necessary but not less often than every six (6) months. If the chief officer determines that a person admitted under § 33-5-301 no longer meets the standards under which the person was admitted, the chief officer shall discharge the person. The chief officer may discharge a person admitted under § 33-5-301 at any time when it is in the best interests of the person.

33-5-303 [Derived from current § 33-5-101(b)(5)]

In the case of a person admitted under § 33-5-301, a parent or legal guardian of a child with developmental disability on behalf of the child, a conservator of a person with developmental disability on behalf of the person, or a person with developmental disability who was admitted on the person's own application and does not lack capacity under § 33-3-218 may request discharge from a developmental center at any time by filing a request with the chief officer of the developmental center. If the person cannot file a written request, anyone acting on the person's behalf may file the request with the person's consent. The chief officer shall discharge the person with developmental disability within twelve (12) hours after receipt of the request or at the time stated in the request, whichever is later.

33-5-304 [NEW]

(a) The department may review the appropriateness of admission to a privately or publicly funded residential facility for persons with developmental disabilities due to mental impairment. The department shall investigate to assess the validity of an allegation of (1) deprivation of liberty without consent, (2) abuse, neglect, or exploitation, (3) placement which is inappropriate to meet the needs of a service recipient, (4) violation of a fiduciary relationship, or (5) any other violation of a right. If the department finds probable cause to believe the allegation after an investigation by inspection of records and interviews with personnel, service recipients and their families and there is no suitable remedy under Chapter 2, Part 4 of this title, the department may require a plan of compliance or may require independent review of admissions under this section for a period of time set by the department.

(b) Within five (5) days after a recommendation is made that a person with developmental disability be admitted to a residential facility for which the department requires independent review under subsection (a), an independent reviewer designated by the department shall determine the appropriateness of the recommended residential service for the person on the basis of the interests and welfare of the person. The reviewer's decision shall not be influenced by any benefits flowing from the admission solely to the family, parents, guardian, or conservator of the person. The reviewer's decision shall be written and shall state the reasons for the decision.

(c) The reviewer's decision on publicly funded placements may be appealed to the division of developmental disabilities by filing the appeal within seven (7) days after receipt of the decision. The division shall review and decide the appeal within fourteen (14) days after receipt of the appeal. The only appeal of the reviewer's decision on privately funded placements is a request for reconsideration by the reviewer filed within fourteen (14) days after receipt of the decision, and the reviewer's decision is final administratively. If granted, reconsideration by the reviewer shall occur within five (5) work days after receipt of the request.

(d) The department shall designate persons from among its employees or by contract to serve as independent reviewers. A person designated to serve as the independent reviewer for a case shall have no conflict of interest with any party to the case and shall be trained with respect to the laws, rules, and information required to make competent decisions as an independent reviewer.

## Part 4

## Forensic Services for Persons with Mental Retardation

33-5-401 [Similar to current § 33-5-301]

The commissioner may establish programs, especially community-based programs, for training, habilitating, or rehabilitating persons with mental retardation under this part.

33-5-402 [Similar to current § 33-5-305(a)]

## IF AND ONLY IF

(1) (A) A juvenile court determines in a delinquency proceeding, on the basis of an evaluation under § 37-1-128(c), that a child has mental retardation, OR

(B) A circuit, criminal, or general sessions court determines on the basis of an evaluation under § 33-7-301(a) that a criminal defendant is incompetent to stand trial due to mental retardation, OR

(C) A circuit or criminal court enters a verdict of not guilty by reason of insanity on a capital offense against a defendant with mental retardation,

## THEN

(2) The District Attorney General may file a complaint to require involuntary care and treatment of the defendant under 33-5-403, AND

(3) Only the juvenile court which has jurisdiction of the child or the circuit or criminal court before which the defendant's criminal case is pending or which would hear the case if the defendant were bound over to the grand jury has jurisdiction to hear a complaint filed under 33-5-403.

33-5-403 [Similar to current § 33-5-305(b)]

## IF AND ONLY IF

(1) A person has mental retardation, AND

(2) The person poses a substantial likelihood of serious harm under § 33-6-501 because of the mental retardation, AND

(3) The person needs care, training, or treatment because of the mental retardation, AND

(4) All available less drastic alternatives to judicial commitment are unsuitable to meet the needs of the person, AND

(5) The District Attorney General files a complaint to require involuntary care and treatment under 33-5-402,

THEN

(6) The person may be judicially committed to involuntary care and treatment in the custody of the commissioner in proceedings conducted in conformity with Chapter 3, Part 6 of this title.

33-5-404 [Current § 33-5-305(c)]

No defendant may be judicially committed under 33-5-403 unless the commissioner designates licensed physicians or licensed psychologists designated as health service providers who file in the commitment proceeding two (2) certificates of need for training and treatment certifying that the defendant satisfies the requirements of subdivisions (1)-(4) of 33-5-403 and showing the factual foundation for the conclusions on each item.

33-5-405 [Current § 33-5-305(d)]

If and only if a court determines that a defendant poses an immediate substantial likelihood of serious harm and commits the defendant under 33-5-403, the commissioner shall designate a licensed state facility to admit the defendant. Otherwise a judicially committed defendant does not come into the custody of the commissioner until the commissioner determines that the state has an available suitable accommodation.

33-5-406 [Similar to current § 33-5-306]

Whenever a person receives evaluation, training or treatment services under this part or Part 5 in connection with a criminal charge or conviction, wherever incarcerated, the person shall receive credit toward the satisfaction of the sentence for the time spent in the custody of the commissioner.

33-5-407 [Current § 33-5-307]

Without regard to its wording, any court order of commitment under this part shall be considered in law as a transfer of the person to the custody of the commissioner.

33-5-408 [Current § 33-5-308]

(a) The commissioner shall cause each person committed under § 33-5-403 or transferred under § 33-3-301 or Chapter 3, Part 4 of this title to be evaluated as often as necessary but not less often than every six (6) months.

(b) The commissioner or the commissioner's designee shall report the details of the findings of the evaluation performed under subsection (a) regarding persons with mental retardation committed under § 33-5-403. The report shall include an assessment of the person's present condition and prospects for restoration to competence to stand trial and shall be sent to the clerk of the court which ordered commitment, the person, the person's attorney, parents, spouse, legal guardian or conservator, if any, and the district attorney.

(c) If upon completion of the evaluation under subsection (a) the commissioner or the commissioner's designee determines that a person with mental retardation transferred under § 33-3-301 no longer meets the standards under which the person was admitted, the person shall

be immediately discharged or transferred to the facility from which the person was transferred or to another appropriate facility of the department under § 33-3-301.

33-5-409 [Similar to current § 33-5-309]

(a) When the commissioner or the commissioner's designee determines that any person committed under § 33-5-403 no longer meets the standards under which the person was committed, the decision maker shall immediately order the person's release and cause the person to be discharged except as provided in subsection (b) or § 33-5-410.

(b) When the commissioner or the commissioner's designee determines that a person who was committed under § 33-5-403 and who is charged with a crime for which the person is subject to being tried is restored to competence to stand trial, the decision maker shall give notice of that fact to the clerk of the court which ordered the person's commitment and deliver the person to the custody of the sheriff of the county from which the person was admitted, who shall transport the person back to the custody of the court.

33-5-410 [Similar to current § 33-5-310]

(a) Whenever a mental retardation facility determines that a person, who has been committed under § 33-5-403 by a criminal court in connection with a capital offense or with a verdict of not guilty by reason of insanity on a capital offense, no longer meets the commitment standards under which such person was committed, it shall follow the procedures set out in this section to effect the person's release from involuntary commitment.

(b) When the mental retardation facility determines that the person no longer meets the commitment criteria under which the person was committed, it shall notify the committing court of this fact and the reasons. Such determination by the department shall create a rebuttable presumption of its correctness. The court may, within ten (10) days of receipt of the notice, set a hearing to be held within twenty-one (21) days of receipt of the facility's notice on whether the person continues to meet the commitment criteria under which the person was committed. The court shall send notice of the hearing to the following: the person, chief officer of the facility, the person's counsel, the person's next of kin, and the District Attorney General.

(c) If the court does not set a hearing and notify the facility within fifteen (15) days of its receipt of the facility's notice, the facility shall release the person from involuntary commitment.

(d) The hearing to determine whether the person continues to meet the commitment criteria under which the person was committed shall be held within twenty-one (21) days of the court's receipt of notice from the facility. The person shall attend the hearing unless the person's presence is waived in writing by counsel before the hearing. If the person does not have counsel, the court shall appoint counsel to represent the person.

(e) Following the hearing, if the court finds by clear, unequivocal, and convincing evidence that the person meets the standards of § 33-5-403, it shall order the person's return to the mental retardation facility under the authority of the person's commitment. Otherwise, it shall order the person's release from commitment.

(f) Either party may appeal a final adjudication under this section to the court of criminal appeals.

## Part 5

## Mandatory Community-Based Services

33-5-501 [NEW]

IF AND ONLY IF

(1) A court with criminal jurisdiction finds on proof by clear and convincing evidence that an adult with mental retardation is:

- (A) Charged with a felony,
- (B) Incompetent to stand trial,
- (C) Not committable under § 33-5-403, and
- (D) At risk of becoming committable, AND

(2) The department certifies to the court that there are funds available within the limits of the department's line item appropriation for services under this section for service to the person,

THEN

(3) The court may order the person to participate in community-based services under a plan approved and developed by the department to attain and maintain competence to stand trial and reduce the risk of becoming committable.

33-5-502 [NEW]

IF AND ONLY IF

(1) A court with criminal jurisdiction finds on proof by clear and convincing evidence that a person with mental retardation:

- (A) Is charged with a felony,
- (B) Is acquitted of the charge on a verdict of not guilty by reason of insanity because of mental retardation at the time of the commission of the crime,
- (C) Is not committable under § 33-5-403,
- (D) Requires training or treatment because of the mental retardation, and
- (E) Is likely to meet the standards of § 33-5-403 without the training or treatment, AND

(2) The department certifies to the court that there are funds available within the limits of the department's line item appropriation for services under this section for service to the person,

THEN

(3) The court may order the person to participate in community-based services under a plan approved and developed by the department to avoid deterioration to the point where the person would be committable.

33-5-503 [NEW]

IF AND ONLY IF

(1) A court with criminal jurisdiction finds on proof by clear and convincing evidence that a person with mental retardation:

(A) Has been committed under 33-5-403 in connection with a capital offense or with a verdict of not guilty by reason of insanity on a capital offense,

(B) No longer meets the standards under which the person was committed, and

(C) Has a condition that requires training or treatment without which the person would again meet commitment standards, AND

(2) The department certifies to the court that there are funds available within the limits of the department's line item appropriation for services under this section for service to the person,

THEN

(3) The court may order the person to participate in community-based services under a plan approved and developed by the department to prevent the person's deterioration to the point where the person would be committable.

33-5-504 [NEW]

If upon completion of an evaluation of a person under § 33-5-403 or § 33-5-408, the department determines that the person meets the standards in § 33-5-501, § 33-5-502, or § 33-5-503, the department shall attempt to develop a community-based services plan for the person for the purpose stated. The plan shall be for a maximum of two (2) years, and no person shall participate in such a plan for more than two (2) years.

33-5-505 [NEW; compare current § 33-6-201(c)]

If a defendant contests a plan proposed by the department under § 33-5-501, § 33-5-502, or § 33-5-503, the court shall hold a hearing within seven days of receipt of the request to determine whether the plan is programmatically appropriate and legally permissible. The court shall either approve the plan or approve the plan as modified by the department to correct deficiencies found by the court.

33-5-506 [NEW]



A service provider with a service recipient under § 33-5-501, § 33-5-502, or § 33-5-503 shall assess the service recipient's needs at least every six months and shall report to the court every six months on the person's progress toward the goal of the plan and on the person's use of the service. A service provider may request the court to release the service recipient from the plan at any time.

33-5-507 [NEW]

If, after two years of intensive training on a Department of Mental Health and Developmental Disabilities approved competence to stand trial curriculum under § 33-5-501, the defendant has not made substantial progress to attain competence to stand trial, the service provider shall assess the defendant's needs and may terminate the service plan and recommend to the court that the defendant be referred to other mental health or mental retardation services as deemed appropriate. The service provider shall report its conclusion to the court before terminating services.

## CHAPTER 6

### MENTAL HEALTH SERVICES

#### Part 1

##### Mental Health Service System

33-6-101 [NEW]

Services to persons with mental illness and serious emotional disturbance are governed generally by Title 33, including Chapters 1--4, 7, 8 and 9.

33-6-102 [Derived from current § 33-2-601]

The department shall maintain a system to assure the most appropriate and effective services for publicly funded service recipients.

33-6-103 [Derived from current § 33-1-208]

(a) The department shall identify adults with severe disabling mental illness and children with serious emotional disturbance.

(b) Such adults are a priority population for the department's mental health services and supports. The department shall set the array of services and supports for this priority population annually in its plan. The state will fund and the department will maintain the array of services and supports for persons in this priority population. Consistent with applicable eligibility requirements, the state may provide the funding for such services through the Medicaid program or any waiver granted under the Medicaid program, specifically including TennCare, other public funds, or private funds.

33-6-104 [Derived from current § 33-6-103(f)(B)]

(a) The department shall maintain a community-based screening process designed to provide alternatives to hospitalization, minimize length of confinement, promote speedy return to the community, and maximize the service recipients' ability to remain in a community setting.

(b) As part of the system the commissioner shall designate individuals to serve as mandatory pre-screening agents. The commissioner may base designation on criteria consistent with § 33-6-427 and may set limits on an agent's authority. The commissioner may decline to designate a person who satisfies the requirements of § 33-6-427. The commissioner may remove authority as a mandatory pre-screening agent from a person without cause. Designation of a person as a mandatory pre-screening agent does not vest any property right, and limitations on authority and removal of designation as a mandatory pre-screening agent are not governed by Title 4, Chapter 5 or Title 8, Chapter 30.

(c) An agent has only the authority designated by the commissioner and, if the agent is not a physician, the authority of the agent terminates if the person no longer satisfies § 33-6-427. An agent's authority is valid in connection with hospitalization of a privately funded person at a private hospital or treatment resource only if the private hospital or treatment resource files notice of acceptance of the designated person's authority with the commissioner.

33-6-105 [NEW, derived from current § 33-2-604(3)--(5)]

A publicly funded or potentially publicly funded person with mental illness or serious emotional disturbance shall not be:

(1) Admitted to a hospital under Chapter 6, Part 2 without approval by the mandatory pre-screening agent, or

(2) Involuntarily admitted or committed under Chapter 6, Part 4 unless the mandatory pre-screening agent provides one (1) of the certificates for each set of certificates of need required by §§ 33-6-309, 33-6-404, 33-6-408, and 33-6-409.

33-6-106 [NEW]

(a) If a mandatory pre-screening agent performs the initial evaluation of a person for admission and determines that the person does not meet admission criteria, the mandatory pre-screening agent shall assure that the person has alternative services available and offered if appropriate. The mandatory pre-screening agent shall contact the person within twelve (12) hours to determine outcome and complete follow-up as necessary.

(b) If a mandatory pre-screening agent determines that a person does not meet admission criteria after another professional has approved the person for admission or prepared the initial certificate of need, the certifying professional shall relinquish responsibility for the person to the mandatory pre-screening agent, and the mandatory pre-screening agent shall assure that the person has alternative services available and offered. The mandatory pre-screening agent shall contact the person within twelve (12) hours to determine outcome and complete follow-up as necessary.

(c) If the evaluating professional at a hospital or treatment resource is not a mandatory pre-screening agent, then transportation of and admission to a hospital or treatment resource shall not begin until the mandatory pre-screening agent completes a certificate of need.

## 33-6-107 [NEW]

(a) All inpatient providers of mental health services shall have treatment review committees to make decisions for service recipients who are admitted to inpatient facilities and lack capacity under § 33-3-218 as determined under rules adopted under § 33-3-217 to make decisions for themselves on medication, release of information to other qualified mental health professionals or case management agencies, getting information from other treatment agencies, or release of information to a family member.

(b) The treatment review committee shall be composed of at least four (4) members. No one who is a member of a service recipient's treatment team may be a member of the treatment review committee. The treatment review committee should include a licensed physician, a service recipient advocate, and two (2) who are qualified mental health professionals, licensed pharmacists, or clinical chaplains. The treatment review committee shall encourage service recipients who are sixteen (16) years old or older to participate with the treatment review committee to the extent possible. The treatment review committee shall make every effort to obtain the participation of parents, legal custodian, or legal guardian in the meeting if the service recipient is a child and not emancipated. The service recipient's family members, legal custodian, legal guardian, conservator, or attorney-in-fact under a durable power of attorney for mental health care may attend the meeting.

(c) The treatment review committee shall not override a decision by a parent, legal custodian, or legal guardian of a service recipient who is an unemancipated child, or a conservator of a service recipient.

(d) A person committed involuntarily to a hospital or treatment resource who does not lack capacity to make a decision on medication may be given medication over the service recipient's objection only if the service recipient's treatment review committee approves the medication.

## Part 2

## Voluntary Admission to Inpatient Treatment

## 33-6-201 [Similar to current § 33--6-101(a)(1)]

(1) A person who is sixteen (16) years of age or over and does not lack capacity to apply under § 33-3-218, (2) a parent, legal custodian, or legal guardian who is acting on behalf of a child, (3) a conservator whom the appointing court has expressly granted authority to apply for the person's admission to a hospital or treatment resource for mental illness or serious emotional disturbance, (4) a qualified mental health professional acting on the basis of the terms of the person's declaration for mental health treatment, or (5) a person's attorney-in-fact under a durable power of attorney for mental health care under Title 34, Chapter 6, Part 2 that expressly authorizes hospitalization for mental illness may apply for admission to a public or private hospital or treatment resource for diagnosis, observation and treatment of a mental illness or serious emotional disturbance.

## 33-6-202 [Similar to current § 33-6-101(a)(2)]

Upon such application, if an examination by an admitting physician determines the need for hospitalization, the chief officer of a public hospital shall admit and the chief officer of a private hospital or treatment resource may admit the person. The chief officer shall notify the parent, legal guardian, or legal custodian of a service recipient who is a child of the admission. Admission is subject to the availability of suitable accommodations.

33-6-203 [Similar to current § 33-6-101(a)(3)]

No unemancipated child may be admitted under this part for more than one (1) six-month period in any twelve-month period unless the admissions review committee approves further hospitalization.

33-6-204 [Similar to current §§ 33-6-101(a)(4) and (5)]

The admissions review committee consists of four (4) persons. Two (2) members shall be appointed from the hospital or treatment resource by the chief officer and two (2) members shall be appointed from the community contiguous to the hospital or treatment resource by the Chair of the Tennessee Commission on Children and Youth. The members appointed by the Chair of the Tennessee Commission on Children and Youth shall not be employees or staff members of the hospital or treatment resource. The committee members shall be trained or experienced specifically in child mental health. Committee members shall serve voluntarily, and the hospital or treatment resource shall reimburse them for their travel and per diem living expenses.

33-6-205 [Derived from the first two sentences of current § 33-6-101(a)(5)]

The admissions review committee shall approve continued hospitalization by a vote of at least three (3) of its members. The committee may recommend the person's continued hospitalization for a period not to exceed six (6) months. If the committee does not approve continued hospitalization, the person shall be released, unless, prior to the committee's decision, a petition for judicial hospitalization has been filed under Chapter 6, Part 5.

33-6-206 [Similar to current § 33-6-101(b)]

- (1) An adult service recipient,
- (2) A service recipient's conservator,
- (3) A service recipient's attorney in fact under a durable power of attorney for mental health care,
- (4) The parent, legal custodian, or legal guardian who applied for the admission of a child, or
- (5) A child who is sixteen (16) years of age or over and was admitted on the child's own application may at any time request the service recipient's release by filing a written application with the chief officer. If a competent service recipient cannot file a written request, a person acting on the service recipient's behalf may file the request with the service recipient's consent.

33-6-207 [Similar to current § 33-6-101(c)]

If the chief officer receives a request for discharge under § 33-6-206 and does not admit the service recipient under Chapter 6, Part 4, the chief officer shall release the service recipient, if a child, within twenty-four (24) hours and, if an adult, within twelve (12) hours after receipt of the request or at the time stated in the request, whichever is later.

33-6-208 [Current § 33-6-101(d)]

The chief officer shall notify the parent, legal guardian, or legal custodian of a service recipient who is a child before releasing the child. If the chief officer has reason to believe that the child is likely to be dependent and neglected upon release, then the chief officer shall notify the Department of Children's Services before the release.

Part 3

Persons with Severe Impairments

33-6-301 [NEW]

For purposes of this part, unless the context requires otherwise, "severe impairment" means a condition in which an adult or an emancipated child:

(1) As a result of a mental illness or serious emotional disturbance:

(A) Is in danger of serious physical harm resulting from the person's failure to provide for the person's essential human needs of health or safety, or

(B) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over the person's actions, and

(2) Is not receiving care that is essential for the person's health or safety.

33-6-302 [NEW; derived from NY Mental Hygiene Law § 9.40]

No person shall be detained under this part except in a treatment resource that provides psychiatric services, twenty-four (24) hour crisis services, and supervised observation beds, participates in mandatory pre-screening authority under § 33-6-104, and is approved by the department for service under this part. The chief officer may detain a person alleged (1) to have a mental illness or serious emotional disturbance for which immediate observation, care and treatment in such program is appropriate and (2) to be experiencing "severe impairment" which is likely to result in serious harm to the person. The chief officer shall have entered on the record the reasons why and with whom the person came to the treatment resource.

33-6-303 [NEW, derived from NY Mental Hygiene Law § 9.40]

A physician shall examine the person as soon as practicable but at least within six hours after the person arrives at the treatment resource.

33-6-304 [NEW, derived from NY Mental Hygiene Law § 9.40]

IF AND ONLY IF

(1) The physician determines that the person has a mental illness or serious emotional disturbance for which immediate observation, care and treatment in a treatment resource is appropriate, AND

(2) The physician determines that the person is experiencing "severe impairment" which is likely to result in serious harm to the person,

THEN

(3) The person may be detained for observation, care and treatment and further examination for up to twelve (12) hours from the time the person arrived at the treatment resource.

33-6-305 [NEW, derived from NY Mental Hygiene Law § 9.40]

IF AND ONLY IF

(1) Another physician examines the person and confirms the determination of the first examining physician under 33-6-304 within twelve (12) hours after the time the person arrived, AND

(2) The person is admitted to an extended observation bed for observation, care, and treatment,

THEN

(3) The person may be detained under this part for up to seventy-two (72) hours from the time the person arrived at the program's emergency room.

33-6-306 [NEW, derived from NY Mental Hygiene Law § 9.40]

At the time of admission to an extended observation bed, the person shall be given written notice of the person's status and rights as a service recipient under this title. The notice shall contain the service recipient's name. The notice shall be provided to the same persons and in the manner as if the service recipient had been admitted under Chapter 6, Part 4.

33-6-307 [NEW, derived from NY Mental Hygiene Law § 9.40]

If the person or anyone acting on the person's behalf demands that the person be released and the chief officer does not detain the person in conformity with Chapter 6, Part 4 or 5, the chief officer shall discharge the person.

33-6-308 [NEW, derived from NY Mental Hygiene Law § 9.40]

If at any time it is determined that the person is no longer in need of immediate observation, care and treatment in accordance with this part and is not in need of involuntary care and treatment in a hospital, the person shall be released unless the person agrees to be admitted to a hospital or treatment resource.

33-6-309 [NEW, derived from NY Mental Hygiene Law § 9.40]

If at any time within the seventy-two hour period it is determined that the person continues to require immediate observation, assessment, and treatment in accordance with this part and that the requirement is likely to continue beyond the seventy-two hour period, the person shall be moved immediately to an appropriate hospital or treatment resource authorized to receive and detain persons with mental illness or serious emotional disturbance under Chapter 6, Part 4. The person shall be evaluated for admission by the mandatory pre-screening agent and, if appropriate, shall be admitted in accordance with Chapter 6, Part 4, and if the person is so admitted, the fifteen day retention period of Chapter 6, Part 4 shall be reduced by the number of days the person was detained under this part. Any person moved to a hospital pursuant to this paragraph shall be moved without regard to the transfer provisions of this title.

33-6-310 [NEW]

The department shall monitor admissions under this part to assure that it is not used in any way that violates the rights of service recipients with mental illness or serious emotional disturbance.

33-6-311 [NEW]

Service under this part shall not be used instead of assessment or evaluation that can be performed on an outpatient basis.

#### Part 4

##### Emergency Involuntary Admission to Inpatient Treatment

33-6-401 [Current § 33-6-103(a)]

IF AND ONLY IF

(1) A person has a mental illness or serious emotional disturbance, AND

(2) The person poses an immediate substantial likelihood of serious harm under § 33-6-501 because of the mental illness or serious emotional disturbance,

THEN

(3) The person may be detained under § 33-6-402 to obtain examination for certification of need for care and treatment.

33-6-402 [Current § 33-6-103(b)]

If an officer authorized to make arrests in Tennessee, a licensed physician, a psychologist authorized under § 33-6-427(a), or a professional designated by the commissioner under § 33-6-427(b) has reason to believe that a person is subject to detention under §§ 33-6-401, then the officer, physician, psychologist, or designated professional may take the person into custody without a civil order or warrant for immediate examination under § 33-6-404 for certification of need for care and treatment.

33-6-403 [Current § 33-6-103(c)]

IF AND ONLY IF

- (1) A person has a mental illness or serious emotional disturbance, AND
- (2) The person poses an immediate substantial likelihood of serious harm, under § 33-6-501, because of the mental illness or serious emotional disturbance, AND
- (3) The person needs care, training, or treatment because of the mental illness or serious emotional disturbance, AND
- (4) All available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person,

THEN

- (5) The person may be admitted and detained by a hospital or treatment resource for emergency diagnosis, evaluation, and treatment under this part.

33-6-404 [Derived from current § 33-6-103(d)]

IF

- (1) (A) A licensed physician, psychologist, or designated professional takes a person into custody under § 33-6-402, OR
- (B) A person is brought to such a physician, psychologist, or designated professional for examination under this section,

THEN

- (2) The physician, psychologist, or designated professional shall immediately examine the person and decide whether the person is subject to admission to a hospital or treatment resource under § 33-6-403, AND

(3) (A) IF

- (i) The person is not subject to admission,
- THEN

- (ii) The physician, psychologist, or designated professional shall release the person, AND

(B) IF

- (i) The person is subject to admission,
- THEN

- (ii) The physician, psychologist, or designated professional shall complete a certificate of need for such emergency diagnosis, evaluation, and



treatment showing the factual foundation for the conclusions on each item of § 33-6-403, AND

(iii) The physician, psychologist, or designated professional shall assess the person's clinical needs and need for physical restraint or vehicle security and determine the mode of transportation to the hospital in consultation with the mandatory pre-screening agent, other mental health professional familiar with the person, or a knowledgeable family member.

33-6-405 [RESERVED]

33-6-406 [Derived from current § 33-6-103(e) and (g)]

(a) If the person is certified for admission under § 33-6-404 and is not already at the hospital or treatment resource at which the person is proposed to be admitted, the physician, psychologist, or designated professional who completed the certificate of need shall give the sheriff or the transportation agent designated under Chapter 6, Part 9, the original of the certificate and turn the person immediately over to the custody of the sheriff or the transportation agent, who shall transport the person to a hospital or treatment resource that has available accommodations for the person for proceedings under § 33-6-407.

(b)(1) Before transportation begins, the sheriff or transportation agent shall notify the hospital or treatment resource at which the person is proposed to be admitted as to where the person is and the best estimate of anticipated time of arrival at the hospital or treatment resource.

(2) If the sheriff or transportation agent has given notice and arrives at the hospital or treatment resource within the anticipated time of arrival, then the sheriff or transportation agent is required to remain at the hospital or treatment resource only long enough for the person to be evaluated for admission under § 33-6-407, but not longer than one (1) hour and forty-five (45) minutes. After one (1) hour and forty-five (45) minutes the person is the responsibility of the evaluating hospital or treatment resource, and the sheriff or transportation agent may leave.

(3) If the sheriff or transportation agent has not given notice as required under subdivision (b)(1) of this section or has not arrived within the anticipated time of arrival, the sheriff or transportation agent shall remain at the hospital or treatment resource as long as it takes to complete the evaluation under § 33-6-407.

(4) In counties having a population of six hundred thousand (600,000) or more people according to the 1970 Federal Census of population or any subsequent Federal Census, the provisions of subsection (b)(1)--(3) of this section do not apply, and the sheriff or transportation agent is relieved of further transportation duties after the person has been delivered to the hospital or treatment resource, and transportation duties shall be assumed by appropriate personnel of the hospital or treatment resource.

33-6-407 [Similar to current § 33-6-103(g), (h)]

(a) A hospital or treatment resource that receives a person transported under § 33-6-406 shall have a licensed physician give the person a physical and mental examination to determine whether the person is subject to admission under § 33-6-403.

(b) If the person is subject to admission under § 33-6-403, the physician shall complete a certificate of need for such emergency diagnosis, evaluation, and treatment showing the factual foundation for the conclusions on each item of § 33-6-403, and the person who took the service recipient to the hospital or treatment resource may then apply for the admission for the purpose of emergency diagnosis, evaluation and treatment.

(c) If the person is not subject to admission and the sheriff or transportation agent is under a duty to remain at the hospital or treatment resource under § 33-6-406, the sheriff or transportation agent shall return the person to the county.

(d) If the person is not subject to admission and the sheriff or transportation agent is not under a duty to remain at the hospital or treatment resource under § 33-6-406, the hospital or treatment resource shall return the person to the county.

33-6-408 [Similar to current § 33-6-103(h)]

If the person has been certified as subject to admission under § 33-6-403 and is already at the hospital or treatment resource at which the person is proposed to be admitted, the person who took the service recipient to the hospital or treatment resource may then apply for the admission for the purpose of emergency diagnosis, evaluation and treatment. Except as provided in § 33-6-409, the application shall be accompanied by the two (2) certificates of need and shall state the reasons and circumstances under which the person was taken into custody.

33-6-409 [NEW]

IF AND ONLY IF

(1) The application under § 33-6-408 is to the hospital where the physician has prepared the initial certificate of need,

THEN

(2) The application may be accepted with a single certificate attached, AND

(3) The person may be detained for up to twelve (12) hours to obtain a second certificate, AND

(4) Treatment shall not be imposed before the second certificate has been obtained and the person has been admitted under § 33-6-410, 33-6-411, or 33-6-412,

AND

(5) IF

(A) The second certificate is not obtained within twelve (12) hours after detention under this section,

THEN

(B) The person shall be discharged.

33-6-410 [Similar to current § 33-6-103(i)]

If the chief officer of a state hospital or treatment resource determines that the person is subject to admission under § 33-6-403 and has the required certificates of need, then the chief officer of the state facility shall admit and detain the person for emergency diagnosis, evaluation and treatment.

33-6-411 [Similar to current § 33-6-103(j)]

IF

(1) The chief officer of a licensed private or local public hospital or treatment resource determines that the person is subject to admission under § 33-6-403 and has the required certificates of need, AND

(2) The facility has contracted with the state to serve persons in the region,

THEN

(3) The facility shall admit and detain the person in conformity with its obligations under its contract with the state for emergency diagnosis, evaluation and treatment.

33-6-412 [Similar to current § 33-6-103(k)]

IF

(1) The chief officer of a licensed private or local public hospital or treatment resource determines that the person is subject to admission under § 33-6-403 and has the required certificates of need, AND

(2) (A) A parent, legal guardian, legal custodian, conservator, spouse, or an adult relative of the person, or any other person has made arrangements to pay the cost of care and treatment in a hospital, or treatment resource, OR

(B) Such a facility chooses to accept the person when no third person has made arrangements to pay the cost,

THEN

(3) The facility may admit and detain the person for emergency diagnosis, evaluation and treatment.

33-6-413 [Similar to current § 33-6-103(l)]

The chief officer, upon admission of the person, shall notify the general sessions judge where the hospital or treatment resource is located by telephone or in person and shall provide the information from the certificates of need and such other information as the court may desire which is in the possession of the hospital or treatment resource bearing on the condition of the person. If the general sessions court finds that there is probable cause to believe that the defendant is subject to admission to a hospital or treatment resource under § 33-6-403, the court may order the defendant admitted for not more than five (5) days from the date of the

order, excluding Saturdays, Sundays, and holidays, for emergency diagnosis, evaluation and treatment pending a probable cause hearing under § 33-6-422. If the court does not order the defendant admitted, the defendant shall be released. The court shall give notice of the time and place of the probable cause hearing by mail to the defendant, the defendant's attorney, the chief officer of the hospital or treatment resource, and the parent, legal guardian, conservator, spouse or adult next of kin of the defendant.

33-6-414 [Current § 33-6-103(m)]

If the judge is not available and all other provisions of this part have been complied with, the admitting facility may hold the defendant for not more than twenty-four (24) hours pending a court order under § 33-6-413, and the staff may render only necessary emergency treatment.

33-6-415 [Current § 33-6-103(n)]

Pending the probable cause hearing under § 33-6-422, no treatment shall be given that will make the defendant unable to consult with counsel or to prepare a defense in proceedings for involuntary care and treatment. No psychosurgery, convulsive treatments, or insulin treatment shall be undertaken for any psychiatric disorder until an order has been entered, after the § 33-6-422 probable cause hearing in accordance with the provisions of this part, requiring continued involuntary care and treatment of the defendant.

33-6-416 [Similar to current § 33-6-103(o)]

If the court orders the admission of the defendant for diagnosis, evaluation and treatment under § 33-6-413, the chief officer shall give notice of the order to the defendant and by mail or telephone to the parent, legal guardian, legal custodian, conservator, spouse, or adult next of kin of the defendant. The notice shall state specifically the basis for the defendant's detention and the standards for possible future commitment. The notice shall also inform the defendant of the defendant's right to counsel during the course of proceedings for involuntary care and treatment.

33-6-417 [Current § 33-6-103(p)]

If the defendant is released under § 33-6-705 or this part before the § 33-6-422 hearing, the chief officer shall notify the court which ordered the defendant's emergency diagnosis, evaluation and treatment. If the defendant is transferred to another facility before the § 33-6-422 hearing, the court shall transfer the hearing to the general sessions court of the county to which the defendant is transferred, and the hearing shall be held within five (5) days of the defendant's original detention under this part.

33-6-418 [Current § 33-6-103(q)]

Probable cause proceedings under § 33-6-422 shall be conducted in conformity with §§ 33-3-610--33-3-615.

33-6-419 [Current § 33-6-103(r)]

The defendant's attorney shall notify the court of the representation immediately after accepting it. If the defendant does not employ an attorney, the court shall appoint an attorney to represent the defendant not later than two (2) days after the original detention or three (3) days

before the date of the hearing, whichever is earlier. An attorney representing the defendant shall not serve as guardian *ad litem*. If the court determines that the defendant is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the defendant's guardian *ad litem*.

33-6-420 [Current § 33-6-103(s)]

If the defendant consents in writing to a waiver of hearing, counsel may waive such hearing upon proper notice to the court.

33-6-421 [Similar to current § 33-6-103(t)]

The chief officer shall file with the court, by the time of the probable cause hearing, certificates of need for care and treatment from two (2) licensed physicians or one (1) licensed physician and either a psychologist qualified under § 33-6-427(a) or a person designated by the commissioner under § 33-6-427(b), certifying that the defendant satisfies the requirements of § 33-6-502(1)--(4) and that if involuntary treatment is not continued the defendant's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the defendant would be again admissible under § 33-6-403, and showing the factual foundation for the conclusions on each item of the certificates.

33-6-422 [Current § 33-6-103(u)]

If, after the hearing is waived or is completed and the court has completed its consideration of the evidence, including the certificates of the examining professionals, and any other information relevant to the mental condition of the defendant, the court finds probable cause to believe that the defendant is subject to care and treatment under § 33-6-502 and that if involuntary treatment is not continued the defendant's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the defendant would be again admissible under § 33-6-403 of this section, the court may order the defendant held for care and treatment pending a hearing under Chapter 6, Part 5 for not more than fifteen (15) days after the probable cause hearing unless a complaint is filed under Chapter 6, Part 5 within the fifteen (15) days.

33-6-423 [Similar to current § 33-6-103(v)]

If the court does not find both:

(1) That there is probable cause to believe that the defendant is subject to care and treatment under § 33-6-502; and

(2) That there is probable cause to believe that if involuntary treatment is not continued the defendant's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the defendant would be again admissible under § 33-6-403, the court shall order the release of the defendant from the hospital or treatment resource and terminate the proceedings under this part.

33-6-424 [Current § 33-6-103(w)]

If the chief officer determines that the defendant's condition does not support the filing of the certificates required by § 33-6-422, the chief officer shall release the defendant. The chief officer shall release the defendant five (5) days, excluding Saturdays, Sundays, and holidays, from the date of the general sessions court's original order to hold the defendant unless the general sessions court has ordered the defendant's further care and treatment under § 33-6-422 or the defendant has been committed under Chapter 6, Part 5. The chief officer shall release the defendant not later than fifteen (15) days after the probable cause hearing unless a complaint is filed under Chapter 6, Part 5 within the fifteen (15) days.

33-6-425 [Current § 33-6-103(x)]

No defendant shall be detained at a jail or other custodial facility for the detention of persons charged with or convicted of criminal offenses, unless the defendant is under arrest for the commission of a crime.

33-6-426 [Current § 33-6-103(y)]

If a person who is not a licensed physician executes the first certificate of need in support of hospitalization under this part, then only a licensed physician may execute the second certificate of need in support of hospitalization under this part.

33-6-427 [Derived from current § 33-6-103(f)]

(a) If a person is a licensed psychologist designated as a health service provider by the board of healing arts and is actively practicing as such, the person may take any action authorized and perform any duty imposed on a physician by §§ 33-6-401--33-6-406.

(b) If a person:

(1) Is a psychological examiner; social worker who is certified with two years of mental health experience or licensed; a marital and family therapist; a masters degreed nurse who functions as a psychiatric nurse; a professional counselor; or if the person is to provide service to service recipients who are children, has any of the preceding educational credentials plus two years of full time mental health experience with children;

(2) Is licensed or certified to practice in Tennessee if required for the discipline; and

(3) Satisfactorily completes a training program approved and provided by the department on emergency commitment criteria and procedures, the commissioner may designate the person to take any action authorized and perform any duty imposed on a physician by §§ 33-6-401--406 to the extent such duties are within the scope of practice of the profession in which the person is licensed or certified.

(c) Subsection (b) of this section does not affect any property right of an employee of the state while the person is acting in the person's capacity as employee of the state.

Part 5

Non-emergency Involuntary Admission to Inpatient Treatment

33-6-501 [Current § 33-6-104(a)]

IF AND ONLY IF

(1) (A) A person has threatened or attempted suicide or to inflict serious bodily harm on such person, OR

(B) The person has threatened or attempted homicide or other violent behavior, OR

(C) The person has placed others in reasonable fear of violent behavior and serious physical harm to them, OR

(D) The person is unable to avoid severe impairment or injury from specific risks, AND

(2) There is a substantial likelihood that such harm will occur unless the person is placed under involuntary treatment,

THEN

(3) The person poses a "substantial likelihood of serious harm" for purposes of Title 33.

33-6-502 [Current § 33-6-104(b)]

IF AND ONLY IF

(1) A person has a mental illness or serious emotional disturbance, AND

(2) The person poses a substantial likelihood of serious harm because of the mental illness or serious emotional disturbance, AND

(3) The person needs care, training, or treatment because of the mental illness or serious emotional disturbance, AND

(4) All available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person,

THEN

(5) The person may be judicially committed to involuntary care and treatment in a hospital or treatment resource in proceedings conducted in conformity with Chapter 3, Part 6 of this title.

33-6-503 [Similar to current § 33-6-104(c)]

No defendant may be judicially committed under this part unless:

(1) Two (2) licensed physicians or

(2) One (1) licensed physician and one (1) licensed clinical psychologist qualified as provided in § 33-6-427(a) file in the commitment proceeding certificates of need for care and treatment certifying that the defendant satisfies the requirements of § 33-6-502(b)(1)-(4) and showing the factual foundation for the conclusions on each item. No defendant who is a child under age of sixteen (16) may be judicially committed under this part unless one of the certificates is by a physician or psychologist with experience with children.

33-6-504 [Similar to current § 33-6-104(d)]

The parent, legal guardian, legal custodian, conservator, spouse, or a responsible relative of the person alleged to be in need of care and treatment, a licensed physician, a licensed clinical psychologist who meets the requirements of § 33-6-427(a), a health or public welfare officer, an officer authorized to make arrests in Tennessee, or the chief officer of a facility which the person is in may file a complaint to require involuntary care and treatment of a person with mental illness or serious emotional disturbance under this part.

33-6-505 [Current § 33-6-104(e)]

If the department has designated a licensed state facility as having available suitable accommodations, the court shall commit the defendant to the state facility, and the defendant shall be placed in the custody of the commissioner.

33-6-506 [Current § 33-6-104(f)]

If a licensed public hospital or treatment resource other than a state facility has available suitable accommodations, the court may commit the defendant to the public hospital or treatment resource.

33-6-507 [Current § 33-6-104(g)]

If a licensed private or local public hospital or treatment resource has contracted with the department to serve such defendants in the region and has available suitable accommodations, the court shall commit the defendant to the facility, and the facility shall admit and detain the defendant in conformity with its obligations under its contract with the department.

33-6-508 [Similar to current § 33-6-104(h)]

IF

(1) (A) A parent, legal guardian, legal custodian, conservator, spouse, or an adult relative of the defendant, or any other person has made arrangements to pay the cost of care and treatment in a licensed private hospital or treatment resources, OR

(B) Such a facility chooses to accept the defendant when no third person has made arrangements to pay the cost, AND

(2) Placement in the facility is more appropriate to the needs of the defendant than placement in a state facility,



THEN

- (3) The court may commit the defendant to the facility.

33-6-509 [Current § 33-6-104(i)]

The chief officer of a facility to which a person is committed under this part shall not admit the person until the facility has available suitable accommodations. If a person is committed to a state facility under this part, the person does not come into the custody of the commissioner until the facility has available suitable accommodations.

33-6-510 [Current § 33-6-105]

If a person ordered to be hospitalized under this part is eligible for hospital care or treatment by the Veterans' Administration of the United States within this state, the court, upon receipt of a certificate from such agency showing that facilities are available and that the person is eligible for care or treatment there, may order the person to be placed in the custody of the agency for hospitalization within this state. With respect to such persons the appropriate provisions of § 34-5-118, being a part of the Uniform Veterans' Guardianship Law, shall apply.

#### Part 6

##### Mandatory Outpatient Treatment

33-6-601 [Similar to current § 33-6-201(a)]

IF

- (1) A person with mental illness or serious emotional disturbance was committed involuntarily under Chapter 6, Part 5, AND

- (2) The hospital staff determines preliminarily:

(A) That the person will need to participate in outpatient treatment on discharge and

(B) That there is a likelihood that the discharge will be subject to the outpatient treatment obligation of this part, AND

- (3) The person refuses to give consent to disclose information which is legally confidential under this title to the proposed outpatient qualified mental health professional,

THEN

- (4) The hospital and qualified mental health professional may exchange information as necessary to carry out this part.

33-6-602 [Similar to current § 33-6-201(b)]

IF

(1) On the basis of a review of the person's history before and during hospitalization, the hospital staff concludes that:

(A) The person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission,

(B) The person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a likelihood of serious harm under § 33-6-501 unless treatment is continued,

(C) The person is likely to participate in outpatient treatment with a legal obligation to do so,

(D) The person is not likely to participate in outpatient treatment unless legally obligated to do so, and

(E) Mandatory outpatient treatment is a suitable less drastic alternative to commitment,

THEN

(2) The person shall be eligible for discharge subject to the obligation to participate in any medically appropriate outpatient treatment, including but not limited to psychotherapy, medication, or day treatment, under a plan approved by the releasing facility and the outpatient qualified mental health professional.

#### 33-6-603 [NEW]

(a) In developing the plan, the releasing facility and the outpatient qualified mental health professional shall consult with the service recipient; the service recipient's parents, legal custodian, or legal guardian if the service recipient is a child; and the service recipient's conservator, if any. Before approving the outpatient treatment plan, the releasing facility and the outpatient qualified mental health professional shall obtain the service recipient's consent to the plan to the extent practical and shall obtain the consent of the service recipient's parents, legal custodian, or legal guardian if the service recipient is a child.

(b) The releasing facility shall provide a clear written statement of what the service recipient shall do to stay in compliance with the plan to the service recipient, the service recipient's parents, legal custodian, or legal guardian if the service recipient is a child; the service recipient's spouse or other adult family member with whom the service recipient would live; and the service recipient's conservator. If the service recipient is a child, the statement shall specify the duties of the service recipient's parents, legal custodian, or legal guardian.

#### 33-6-604 [Similar to current § 33-6-201(c)]

IF

(1) The person requests judicial review of the treatment plan within 48 hours after being advised of the person's eligibility for release under it,

THEN

(2) The hospital shall notify the court where the hospital is located which has the same jurisdiction as the committing court that the person is eligible for discharge subject to the obligation to participate in outpatient treatment under the plan agreed to by the releasing facility and the outpatient qualified mental health professional, AND

(3) The court shall hold a hearing within seven days of receipt of the request to determine whether the treatment plan is medically appropriate and legally permissible, AND

(4) The court shall either approve the plan or approve the plan as modified by the releasing facility and the outpatient qualified mental health professional to correct deficiencies found by the court.

33-6-605 [Current § 33-6-201(d)]

IF

(1) (A) The person does not request judicial review of the discharge plan,  
OR

(B) The court approves an outpatient treatment plan after a hearing under § 33-6-604,

THEN

(2) IF

(A) The person is subject to judicial review under § 33-6-708,

THEN

(B) The person shall be discharged in conformity with § 33-6-708, AND

(3) IF

(A) The person is not subject to judicial review under § 33-6-708,

THEN

(B) The hospital shall discharge the person, AND

(4) The hospital shall notify the committing court that the person has been discharged subject to the obligation to participate in the outpatient treatment.

33-6-606 [Similar to current § 33-6-201(e)]

After discharge the qualified mental health professional may change the treatment plan to meet the person's treatment needs. If the qualified mental health professional changes the treatment plan, the person's obligation to participate in the treatment continues.

33-6-607 [Similar to current § 33-6-201(f)]

If the person is indigent and is not eligible for payment for service under any other governmentally or privately funded system, the department shall provide for the outpatient services. If (1) the person is not indigent or (2) the person is eligible for payment for services under any other governmentally or privately funded system, the person is responsible for payment for the services.

33-6-608 [Current § 33-6-201(g)]

IF

(1) A person who has been discharged subject to the obligation to participate in outpatient treatment is admitted to a hospital or treatment resource before the obligation terminates,

THEN

(2) The obligation to participate in outpatient treatment is suspended, AND

(3) The obligation resumes on discharge unless it has been terminated under §§ 33-6-620, 33-6-622, or 33-6-623 or the discharge is under § 33-6-706.

33-6-609 [Similar to current § 33-6-202]

IF

(1) The parent, legal guardian, conservator, spouse, responsible relative, or qualified mental health professional of a service recipient who has been discharged subject to the obligation to participate in outpatient treatment, the person who initiated the commitment proceeding of the service recipient, or the chief officer of the discharging facility files an affidavit with the court that committed the service recipient or any court with jurisdiction under Chapter 6, Part 5 in the county where the person is being treated or is staying showing that:

(A) The person is required to be participating in outpatient treatment under § 33-6-602,

(B) The person is, without good cause, out of compliance with the treatment plan, and

(C) The qualified mental health professional believes the non-compliance is not likely to be corrected voluntarily,

THEN

(2) The court shall have jurisdiction to conduct original proceedings to enforce the outpatient treatment obligation, AND

(3) The court may order the person to appear before the court at a stated time not later than seventy-two hours after the order is issued to determine whether the person is required by this part to be participating in the outpatient treatment and has failed, without good cause, to participate in the treatment as required, AND

(4) The order and a copy of the affidavit shall be served immediately on the person, the qualified mental health professional, and, if the discharge was under § 33-6-708, the District Attorney General for the jurisdiction in which the committing court is located.

33-6-610 [Similar to current § 33-6-203]

(a) If the person appears in person before the court, the court shall hold a hearing to determine whether the person is required to be participating in outpatient treatment and is, without good cause, not complying with the treatment plan.

(b) If the court determines (1) that the person is complying with the treatment plan or (2) that the person is out of compliance for good cause and will be restored to compliance without further action, the court shall release the person.

(c) If the court determines that the person is out of compliance with the treatment plan without good cause and that the person can be put immediately in compliance with the treatment plan and can be expected to stay in compliance without further hospitalization, the court shall make written findings of fact and conclusions of law on the issues, order the person to comply immediately with the treatment plan, and dismiss the proceedings upon a showing that the person is in compliance.

(d) If the court determines that the person is out of compliance with the treatment plan without good cause and that (1) the person cannot be put in compliance with the treatment plan immediately or (2) the person cannot be expected to stay in compliance without further hospitalization, the court shall make written findings of fact and conclusions of law on the issues and order the person re-committed to the hospital from which the person was released. The sheriff shall immediately transport the person as ordered, and the hospital shall admit the person and give notice of the recommitment to the person's attorney, legal guardian, legal custodian, conservator, and spouse or nearest adult relative, to the qualified mental health professional, to the committing court, and, if the discharge was under § 33-6-708, to the District Attorney General in the committing jurisdiction.

33-6-611 [Similar to current § 33-6-204(a)]

IF

(1) The qualified mental health professional has filed an affidavit showing that:

(A) The person with mental illness or serious emotional disturbance is required to be participating in outpatient treatment,

(B) The person is, without good cause, not complying with the treatment plan, and

(C) The qualified mental health professional believes the non-compliance is not likely to be corrected voluntarily, AND

(2) The person does not respond to the order to appear,

THEN

(3) The court shall order the person taken into custody, AND

(4) The sheriff shall immediately transport the person to the hospital from which the person was discharged, AND

(5) The hospital shall admit the person and give notice of the temporary recommitment and that a hearing under § 33-6-610 will be held to the person's attorney, legal guardian, legal custodian, conservator, and spouse or nearest adult relative, to the qualified mental health professional, to the court which ordered the temporary recommitment of the person, and to the court where the hospital is located which has the same jurisdiction as the recommitting court.

33-6-612 [Similar to current § 33-6-204(b)]

IF

(1) The qualified mental health professional has not filed an affidavit with the court regarding the person with mental illness or serious emotional disturbance, AND

(2) The person does not respond to the order to appear,

THEN

(3) The court shall order the person taken into custody, AND

(4) The officer who serves the order on the person shall take the person to the qualified mental health professional or the professional's appointed substitute.

33-6-613 [NEW]

A person's qualified mental health professional shall appoint a qualified mental health professional as a substitute in the absence of the appointing professional.

33-6-614 [Similar to current § 33-6-204(d)]

(a) If the qualified mental health professional determines that:

(1) The person with mental illness or serious emotional disturbance is in compliance with the treatment plan or

(2) The person is out of compliance for good cause, is put in compliance immediately, and can be expected to stay in compliance without further hospitalization, then the qualified mental health professional shall release the person and notify the court of the basis for the release.

(b) If the qualified mental health professional determines that:

(1) The person is out of compliance with the treatment plan without good cause,

(2) The person can be put in compliance with the treatment plan immediately,

(3) The person complies immediately with the treatment plan, and

(4) The person can be expected to stay in compliance without further hospitalization, the qualified mental health professional shall release the person and notify the court of the basis for the release.

33-6-615 [Similar to current § 33-6-204(e)]

IF

(1) The qualified mental health professional determines that:

(A) The person with mental illness or serious emotional disturbance is out of compliance with the treatment plan without good cause, and

(B) (i) The person cannot be put immediately in compliance with the treatment plan, or

(ii) The person cannot be expected to stay in compliance without further hospitalization, or

(iii) The person does not comply immediately with the treatment plan,

THEN

(2) The qualified mental health professional shall contact the sheriff, AND

(3) The sheriff shall immediately transport the person to the hospital from which the person was discharged, AND

(4) The hospital shall admit the person and give notice of the temporary recommitment and that a hearing under § 33-6-610 will be held to the person, the person's attorney, legal guardian, legal custodian, conservator, and spouse or nearest adult relative, to the qualified mental health professional, to the court which ordered the temporary recommitment of the person, and to the court where the hospital is located that has the same jurisdiction as the recommitting court.

33-6-616 [Derived from current § 33-6-204(f)]

The court where the hospital is located is vested with jurisdiction to hold the hearing on a person returned under § 33-6-611. The court shall schedule a hearing to be held under § 33-6-610 within seventy-two (72) hours of receipt of the notice.

33-6-617 [Current § 33-6-204(g)]

If the person, upon being readmitted under this part, is eligible for discharge under § 33-6-602, the person shall be discharged under § 33-6-602 notwithstanding § 33-3-501. The hospital shall give notice of the discharge to the courts which had been notified of the admission, and the judicial proceedings for recommitment shall be dismissed.

33-6-618 [Similar to current § 33-6-205]

In judicial proceedings under this part the person with mental illness or serious emotional disturbance shall have the following rights:

(1) The burden of proof to establish, as appropriate to the proceedings, that the outpatient treatment plan is proper, that the person is subject to return to the hospital, or that the plan is subject to extension, shall be by clear, unequivocal, and convincing evidence and shall be borne by the party seeking to impose such obligations;

(2) The person shall be present at the hearing unless the person waives such presence in writing. If the person's attorney shows that the person's physical health would be endangered by being at the hearing, the court may order a continuance until the risk is terminated. If the court determines that the person's conduct at the hearing is so violent or otherwise disruptive that it creates a serious risk of harm to the person or others at the hearing or so disrupts the proceedings that they cannot be conducted in a proper manner, the court may order the person restrained or excluded to the extent necessary to the proper conduct of the proceedings. If the person is not present at or is excluded from the hearing, the court shall make a written fact finding as to why the hearing is held in the person's absence; and

(3) The person's attorney shall notify the court of the representation immediately after accepting it. If the person does not employ an attorney, the court shall appoint an attorney to represent the person as soon as possible after the case is docketed. An



attorney representing the person shall not serve as guardian *ad litem*. If the court determines that the person is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the person's guardian *ad litem*.

33-6-619 [Current § 33-6-206]

If a person is ordered to be re-hospitalized for noncompliance with the treatment plan after a hearing under §§ 33-6-609--33-6-610 or 33-6-611, upon readmission the person shall be held under the authority of the original court order of commitment entered in the proceedings under Chapter 6, Part 5, and any other pending proceedings under Chapter 6, Part 4 or 5 shall be dismissed.

33-6-620 [Similar to current § 33-6-207(a)]

IF

(1) At any time the qualified mental health professional determines that:

(A) The person with mental illness or serious emotional disturbance is likely to participate in outpatient treatment without being legally obligated to do so, or

(B) The person no longer needs treatment for the mental illness or serious emotional disturbance,

THEN

(2) The qualified mental health professional shall terminate the treatment obligation, AND

(3) The qualified mental health professional shall notify the committing court and the hospital which discharged the person.

33-6-621 [Similar to current § 33-6-207(b)]

IF

(1) During the sixth month after discharge or after the last renewal the qualified mental health professional determines that:

(A) The person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission and

(B) The person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a likelihood of serious harm under § 33-6-501 unless treatment is continued and

(C) The person is not likely to participate in outpatient treatment unless legally obligated to do so and

(D) Mandatory outpatient treatment is a suitable less drastic alternative to commitment,

THEN

(2) The obligation to participate in outpatient treatment is renewed for six (6) months, AND

(3) The qualified mental health professional shall notify the person, the person's attorney, the hospital which discharged the person, and the committing court of the decision and of the basis for it and of the person's right to request a hearing in the committing court.

33-6-622 [Similar to current § 33-6-201(c)]

If the person files a written request for a hearing with the committing court, within thirty (30) days after receipt of notice the committing court shall hold a hearing to review the decision of the qualified mental health professional. If and only if the court determines that:

(1) The person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission,

(2) The person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a likelihood of serious harm under § 33-6-501 unless treatment is continued,

(3) The person is not likely to participate in outpatient treatment unless legally obligated to do so, and

(4) Mandatory outpatient treatment is a suitable less drastic alternative to commitment, the obligation to participate in outpatient treatment is renewed for six (6) months.

If after a hearing the court does not determine the obligation to participate in outpatient treatment to be renewed, the person is discharged from the outpatient treatment obligation.

33-6-623 [Current § 33-6-201(d)]

IF

(1) A person with mental illness or serious emotional disturbance is discharged subject to an outpatient treatment obligation under § 33-6-602, AND

(2) The qualified mental health professional has not terminated the outpatient treatment obligation under § 33-6-620.

THEN

(3) The person's obligation to participate in outpatient treatment terminates six months after the discharge or the last renewal of the obligation.

## Part 7

## Discharge from Inpatient Treatment

## 33-6-701 [Similar to current § 33-6-108(d)]

The chief officer of a public or private hospital shall, as often as practicable, but not less often than every six (6) months, examine or cause to be examined each person admitted under this title for treatment of mental illness or serious emotional disturbance. If the chief officer determines on the basis of such examination that the person is eligible for discharge under §§ 33-6-705--33-6-706 or § 33-6-602, and that the discharge is not subject to judicial review under § 33-6-708, the chief officer shall order the immediate release of the person and shall notify the person upon whose application the person was admitted and, if the person was involuntarily hospitalized, the court which ordered the hospitalization.

## 33-6-702 [Similar to current § 33-6-108(b)(1)]

Any person hospitalized under a court order obtained under Chapter 6, Part 5, or the person's attorney, parent, legal guardian, legal custodian, conservator, spouse or adult next of kin, shall be entitled, upon the expiration of ninety (90) days following the order and not more frequently than every six (6) months thereafter, to request, in writing, the chief officer of the hospital in which the person is hospitalized to have a current examination of the person's mental condition made by one or more physicians. If the request is timely, it shall be granted. The person shall be entitled at the person's own expense to have a licensed physician not connected with the hospital to participate in the examination. If the person is indigent, is in a department facility, and makes a written request for examination, with the approval of the commissioner, the department shall assist the person in obtaining a licensed physician to participate in such examination in the person's behalf. A physician so obtained by the indigent person shall be compensated for services out of unobligated funds of the department in an amount the department determines to be fair and reasonable.

## 33-6-703 [Similar to current § 33-6-108(b)(2)]

If, after considering the reports of the physicians and other relevant information, the chief officer determines that the person is eligible for discharge under §§ 33-6-705--33-6-706 or § 33-6-602 and that the discharge is not subject to judicial review under § 33-6-708, the chief officer shall order the immediate release of the person and notify the committing court. If one (1) or more of the physicians participating in such an examination reports that the person no longer meets the standards under which the person was admitted, the person may petition the court which ordered the hospitalization for an order directing the person's release. The person shall be apprised of the results of the examination reports and shall be furnished true copies of them which shall accompany the person's petition.

## 33-6-704 [Current § 33-6-108(c)]

In considering such petition, the court shall consider the testimony of the physicians who participated in the examination of the person and their reports accompanying the petition. After considering the testimony and reports, the court shall either:

- (1) Reject the petition and order the continued hospitalization of the person; or

- (2) Order the immediate release of the person.

Any physician participating in the examination shall be a competent and compellable witness at any judicial proceeding held under this title.

33-6-705 [Similar to current § 33-6-109(a)]

IF

- (1) A person was admitted to a hospital for treatment of mental illness or serious emotional disturbance under any provision of this title other than Chapter 6, Part 5, AND

- (2) The person no longer meets the standards under which the admission took place, AND

- (3) The person's detention is not otherwise authorized under the part under which the person was admitted,

THEN

- (4) The person shall be discharged.

33-6-706 [Similar to current § 33-6-109(b)]

IF

- (1) A person was committed involuntarily under Chapter 6, Part 5, AND

- (2) (A) The person does not have a mental illness or serious emotional disturbance, OR

- (B) (i) The person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission, AND

- (ii) The person does not pose a likelihood of serious harm under § 33-6-501, OR

- (C) (i) The person would pose a likelihood of serious harm under § 33-6-501 unless treatment is continued, AND

- (ii) Voluntary outpatient treatment is a suitable less drastic alternative to commitment because the person is likely to participate in outpatient treatment without being legally obligated to do so,

THEN

- (3) IF

- (A) The person is not subject to judicial review under § 33-6-708,

THEN

(B) The person shall be discharged, AND

(4) IF

(A) The person is subject to judicial review under § 33-6-708,

THEN

(B) The person shall be discharged in conformity with § 33-6-708.

33-6-707 [Similar to current § 33-6-109(c)]

IF

(1) A person was committed involuntarily under Chapter 6, Part 5, AND

(2) The person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission, AND

(3) The person would pose a likelihood of serious harm under § 33-6-501 unless treatment continues, AND

(4) Voluntary outpatient treatment is not a suitable less drastic alternative to commitment because the person is not likely to participate in outpatient treatment without being legally obligated to do so,

THEN

(5) The person is eligible for discharge only under § 33-6-602.

33-6-708 [Similar to current § 33-6-110]

(a) If a person is committed involuntarily by a criminal or juvenile court under Chapter 6, Part 5 and the court determines at the time of commitment that, due to the nature of the person's criminal conduct which created a serious risk of physical harm to other persons, the person should not be discharged from the commitment without proceedings under this section to review eligibility for discharge under §§ 33-6-705--33-6-706 and § 33-6-602, the hospital shall proceed under this section to effect discharge from the commitment.

(b) Any person who was committed involuntarily on the basis of mental illness between April 23, 1980 and July 1, 1982 and was subject to the discharge procedures of former § 33-313 during that period is subject to discharge only under the procedures of subsections (c)-(g).

(c) When the chief officer determines that the person is eligible for discharge under §§ 33-6-705--33-6-706 or § 33-6-602, the chief officer shall notify the committing court of that conclusion, of the basis for it, and, if discharge is under § 33-6-602, of the outpatient treatment plan approved by the releasing facility and the qualified mental health professional for the person. Such determination by the chief officer shall create a rebuttable presumption of its correctness. The clerk shall send a copy of that complete notice and plan to the person's

counsel and to the District Attorney General for the jurisdiction in which the committing court is located. The court may, on its own motion or that of the District Attorney General, order a hearing to be held within twenty-one (21) days of the receipt of the chief officer's notice. The court shall send notice of the hearing to the person, the chief officer, the person's counsel, the person's next of kin, and the District Attorney General.

(d) If the court does not set a hearing and notify the chief officer within fifteen (15) days of its receipt of the chief officer's notice, the chief officer shall release the person from involuntary commitment under §§ 33-6-705--33-6-706 or § 33-6-602 as appropriate.

(e) If the court sets a hearing, the hearing shall be held within twenty-one (21) days of the court's receipt of notice from the chief officer. The person shall attend the hearing, unless the person's presence is waived in writing by counsel before the hearing. If the person does not have counsel, the court shall appoint counsel to represent the person throughout the proceedings and any appeal. The person's counsel shall advocate for the least drastic alternative to commitment, unless directed otherwise by the person. Compensation of appointed counsel for the person shall be pursuant to Rule 15 of the Tennessee Supreme Court Rules.

(f) Following the hearing, if the court finds by clear, unequivocal, and convincing evidence that the person is not eligible for discharge under §§ 33-6-705--33-6-706 or § 33-6-602, it shall order the person's return to the hospital under the original commitment. If the court finds otherwise, it shall order the person's release from involuntary commitment in accordance with the recommendations of the chief officer.

(g) The District Attorney General on behalf of the state or the person may file a notice of appeal of a final adjudication under this section to the Court of Criminal Appeals.

## Part 8

### Sex Offenders

33-6-801 [Similar to current § 33-6-301]

As used in this part:

(1) "Sex crime" means any offense involving the unlawful sexual abuse, molestation, fondling, or carnal knowledge of a child of the age of fourteen (14) years or under or incest, a crime against nature, assault with intent to commit rape or rape; and

(2) "Sex offender" means any person who has been convicted of a crime involving the unlawful sexual abuse, molestation, fondling, or carnal knowledge of a child of the age of fourteen (14) years or under or any person convicted of incest, a crime against nature, assault with intent to commit rape or rape.

33-6-802 [Similar to current § 33-6-303]

Any person convicted of a sex crime shall be examined thoroughly by a psychiatrist or licensed psychologist or licensed psychological examiner from the Department of Correction as soon as practicable after admittance to the penal facility. A community mental health center may provide the examination when the service is specifically contracted for and funded by the Department of Mental Health and Developmental Disabilities or the Department of Correction.

## 33-6-803 [Current § 33-6-304]

If, as a result of the examination provided for in § 33-6-802, it is found that such convicted person is capable of being successfully treated, this fact shall be certified by the examining official or officials to the Commissioner of Correction, together with the suggested treatment, whereupon, the Commissioner of Correction shall provide such treatment.

## 33-6-804 [Similar to current § 33-6-305]

(a) Not more than one (1) year nor less than six (6) months prior to the non-parole release of any person convicted of a sex crime, an examination of such person shall be made by a psychiatrist or a licensed psychologist or psychological examiner from the Department of Correction.

(b) The examiner shall determine whether the person has a mental illness and, because of that illness, poses a likelihood of serious harm under § 33-6-501, and is in need of care and treatment in a mental hospital or treatment resource (as defined in § 33-1-101).

(c) If the examiner determines that the person has a mental illness or serious emotional disturbance and poses a likelihood of serious harm because of the illness, the director of the correctional facility shall, before the time for the release of the person, petition where the facility is located for judicial commitment under Chapter 6, Part 5 to a hospital or treatment resource designated by the commissioner.

33-6-805 [Current § 33-6-306]

The Department of Mental Health and Developmental Disabilities in cooperation with the Department of Correction, the Department of Human Services and the District Attorneys General Conference shall develop a "post-plea" treatment system for sexual offenders, victims, and their families, modeled after systems which are operating in some local communities around the country. The system shall provide for a standard fee for treatment services and shall provide for the development of a certification process for service providers to assure sexual abuse treatment expertise by the service providers. The certification should encompass a combination of professional education and licensure with specialized knowledge in this field. The treatment system shall be designed within a conceptual framework which includes, but is not limited to, the following:

- (1) Limiting offender eligibility to first-offender, intra-family abuse, absence of violence or threat of violence, sexual abuse of short duration, absence of drug or alcohol addiction, and abuse which has resulted in no significant trauma to the child victim;
- (2) The sentence and probation established for program participants shall be a definite sentence; and
- (3) As a requirement for participation in the treatment program, the offender shall plead guilty to the commission of the appropriate sexual offense and agree to abide by all requirements of the probation agreement or sentence alternative.

Such probation agreement or sentence alternative shall require that the offender pay for the victim's medical and psychological treatment, as needed, and for such offender's treatment in the treatment program, based upon the offender's financial ability to pay.

## Part 9

### Special Provisions for Mental Health Transportation

33-6-901 [NEW: derived from current § 33-6-103(e)(1)(B) and § 33-6-111.]

(a) The sheriff in a county in which a person with mental illness or serious emotional disturbance is to be transported under Chapter 6, Part 4 or 5 of Title 33, shall transport the person except for persons who are transported by:

- (1) A secondary transportation agent under this section,
- (2) A municipal law enforcement agency that meets the requirements for a secondary transportation agent under this section and is designated by the sheriff, or
- (3) A person authorized under other provisions of this title.

The sheriff may designate a secondary transportation agent or agents for the county for persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security. A secondary transportation agent shall be available twenty-four (24) hours per day, provide adequately for the safety and security of the person to be transported, and provide appropriate medical conditions for transporting persons for involuntary hospitalization. The



sheriff shall take into account in designating a secondary transportation agent or a municipal law enforcement agency both its funding and the characteristics of the persons who will be transported. The sheriff shall consult with the county executive or county mayor before designating a secondary transportation agent. A secondary transportation agent has the same duties and authority under this chapter in the detention or transportation of such persons as the sheriff. The designation of a transportation agent other than the sheriff is a discretionary function under § 29-20-205.

(b) Transportation of persons to be involuntarily hospitalized is the responsibility of the county in which the person is initially detained. The sheriff or secondary transportation agent providing transportation may bill the county of residence for transportation costs.

(c) The department shall provide training on mental health crisis management for transportation agents and the sheriffs' personnel.

33-6-902 [Derived from current § 33-6-106]

(a) Whenever a person is about to be admitted to a hospital or treatment resource under the provisions of Chapter 6, Part 4 or 5, the court shall arrange for the transportation of the person to the hospital. Whenever practicable, the person to be hospitalized shall be permitted to be accompanied by one or more friends or relatives, who shall travel at their own expense. Any reputable and trustworthy relative or friend of the person who will assume responsibility for the person's safe deliverance may be allowed to transport the person to the hospital if such relative or friend will do so at the transporter's own expense.

(b) Pending removal to a hospital, a person with mental illness or serious emotional disturbance taken into custody or ordered to be hospitalized under Chapter 6, Part 4 or 5 may be detained in the person's home or in some suitable facility under such reasonable conditions as the court may order, but the person shall not be detained in a non-medical facility used for the detention of persons charged with or convicted of criminal offenses. Reasonable measures necessary to assure proper care of a person temporarily detained under this section, including provision for medical care, shall be taken.

## Part 10

### Declarations for Mental Health Treatment

33-6-1001 [NEW]

A competent adult may make a declaration for mental health treatment to express the person's preferences and instructions about participation in mental health treatment, including hospitalization for a maximum of fifteen (15) days, psychoactive and other medications, and electroconvulsive and other convulsive therapies. The declaration may include consent to or refusal to permit mental health treatment and other instructions and information for mental health service providers.

33-6-1002 [NEW]

IF AND ONLY IF

(1) (A) A court determines in a proceeding to appoint a conservator under Title 34, Chapters 11 and 13, that a person is currently unable to make an informed decision about mental health treatment as shown by the fact that the person is not able to understand the proposed procedure, its risks and benefits, and the available alternative procedures due to a diagnosed mental illness, OR

(B) (i) (a) Two physicians examine a person, OR

(b) A physician with expertise in psychiatry by training, education, or experience and a doctoral level psychologist with health services designation examine a person, AND

(ii) The examiners determine that the person is currently unable to make an informed decision about mental health treatment as shown by the fact that the person is not able to understand the proposed procedure, its risks and benefits, and the available alternative procedures due to a diagnosed mental illness,

THEN

(2) The person is “incapable of making mental health treatment decisions” for purposes of this part.

33-6-1003 [NEW; derived in part from Tenn. Code Ann. § 34-6-207]

(a) A declaration for mental health treatment continues in effect for two (2) years, for a lesser period if so stated, or until revoked, whichever is sooner. If a declaration for mental health treatment has been invoked and is in effect at expiration under the preceding sentence, the declaration remains effective until the service recipient is capable of making mental health treatment decisions but no more than thirty (30) days after the expiration date. Subsequent declarations shall conform to all requirements of 33-6-1004.

(b) A service recipient may revoke a declaration in whole or in part at any time orally or in writing if the service recipient is capable of making mental health treatment decisions. Making a new declaration revokes an earlier declaration. It is presumed that a service recipient is capable of making mental health treatment decisions. The presumption is a presumption affecting the burden of proof.

(c) A revocation is effective when a service recipient communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the service recipient's medical record.

33-6-1004 [NEW; derived in part from current § 34-6-203]

(a) A declaration is effective only if it is signed by the service recipient and two competent adult witnesses and is not signed on the premises of a mental health service provider. The witnesses shall attest that the service recipient is personally known to them, signed the declaration in their presence, talked with the witnesses about the document, its contents, and the reasons for preparing and wanting the document to be effective, appears to be capable of making mental health treatment decisions, and is not under duress, fraud, or undue influence.

(b) None of the following may be used as a witness:

- (1) The service recipient's mental health service provider;
- (2) An employee of the service recipient's mental health service provider;
- (3) The operator of a mental health facility; or
- (4) An employee of a mental health facility.

(c) At least one (1) of the persons who is a witness shall be a person who is neither:

- (1) A relative of the service recipient by blood, marriage or adoption; nor
- (2) A person who would be entitled to any portion of the estate of the service recipient upon the service recipient's death under any will or codicil of the service recipient that exists at the time of execution of the declaration for mental health treatment or by operation of law then existing.

33-6-1005 [NEW; derived in part from current § 34-6-214]

(a) A declaration becomes effective when it is signed by the declarant and all witnesses and remains valid until revoked or expired. The physician or provider shall act in accordance with an operative declaration when the service recipient has been found to be incapable of making mental health treatment decisions. The physician or provider shall continue to obtain the service recipient's informed consent to all mental health treatment decisions if the service recipient is capable of providing informed consent or refusal.

(b) Upon being presented with a declaration, a physician or other provider shall make the declaration a part of the service recipient's medical record. When acting under authority of a declaration, a physician or provider shall comply with it to the fullest extent possible.

(c) If the physician or other provider is unwilling at any time to comply with the declaration for mental health treatment, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment and shall promptly notify the service recipient and document the notification in the service recipient's medical record. The physician or other provider shall arrange for the prompt and orderly transfer of the patient to the care of others when as a matter of conscience the health care provider cannot implement the decisions as provided in the declaration for mental health treatment.

33-6-1006 [NEW]

(a) The physician or other mental health service provider may provide mental health treatment to the service recipient in a manner contrary to the service recipient's wishes as expressed in a declaration for mental health treatment if and only if:

- (1) The service recipient is involuntarily committed to an inpatient treatment facility under this title and a treatment review committee authorizes it, or
- (2) There is an emergency endangering the service recipient's life or health.

(b) A declaration does not limit any authority under this title to take a person into custody or to admit, retain, or treat a person in a mental health facility.

33-6-1007 [NEW]

If a conservator is appointed with powers over the person for mental health treatment, the declaration for mental health treatment shall remain in effect and shall be superior to the powers and duties of the conservator with respect to mental health treatment covered under the declaration.

33-6-1008 [NEW]

If a mental health service provider has a person's declaration for mental health treatment and learns that the person is being provided mental health treatment by another provider, the mental health service provider shall provide the current service provider with a copy of the declaration. If a mental health service provider knows that a person has revoked a declaration for mental health treatment and learns that the person is being provided mental health treatment by another provider, the mental health service provider shall notify the current service provider of the revoked declaration.

33-6-1009 [NEW; compare Tenn. Code Ann. § 34-6-215]

A declaration for mental health treatment that is validly executed in another state by a nonresident of this state at the time of execution shall be given effect in this state if the declaration for mental health treatment is in compliance with either the provisions of this part or the laws of the state of the service recipient's residence and the department determines that those laws are essentially as protective of the service recipient as this part.

33-6-1010 [NEW]

A declaration for mental health treatment may be expressed in or incorporated into a durable power of attorney for health care that is executed under Title 34, Chapter 6, Part 2 § on or after March 1, 2001. The declaration in that case shall be revocable as to mental health service only under the conditions set in this part.

33-6-1011 [NEW]

A physician or mental health service provider who administers or does not administer mental health treatment as provided in and in good faith reliance on the validity of a declaration is not subject to criminal prosecution, civil liability or professional disciplinary action based on a subsequent finding of the declaration's invalidity.

33-6-1012 [NEW, derived in part from current § 34-6-211]

No mental health service provider, medical service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare plan, or nonprofit hospital plan, or any similar insurance or medical plan may condition admission to a mental health facility or providing mental or physical health treatment or insurance on the requirement that a person execute a declaration for mental health treatment.

## 33-6-1013 [NEW]

(a) It is an offense for a person, without authorization of the service recipient, intentionally to alter, forge, conceal, or destroy a declaration for mental health treatment, the revocation of a declaration, or any other evidence or document reflecting the service recipient's desires and interests, with the intent or effect of affecting the service recipient's mental health treatment.

(b) An offense under this section is a Class A misdemeanor.

## 33-6-1014 [NEW]

(a) The department shall make available a standard form and explanation for declarations for mental health treatment in simple language and easily read type with adequate space to express the preferences and instructions of the service recipient.

(b) The form shall include at least the following information:

- (1) The effect of making the declaration;
- (2) The basic power of a service recipient to control mental health treatment and involuntary treatment authority;
- (3) The general range of mental health treatment processes that the service recipient might consider;
- (4) The conditions under which the declaration may be acted on; and
- (5) How to revoke a declaration.

(c) The form shall include places for at least the following types of preferences and instructions to be written:

- (1) Symptoms that may suggest use of the declaration;
- (2) Psychoactive medication;
- (3) Electroconvulsive or other convulsive treatment;
- (4) Admission to and retention in mental health facilities;
- (5) Actions that the service recipient refuses to permit;
- (6) Mental health service providers; and
- (7) Other matters on which the service recipient may have preferences or instructions or wish to provide information to mental health service providers.

## 33-6-1015 [NEW]

(a) A mental health service provider shall maintain written policies and procedures, applicable to all competent adults who receive mental health treatment from the service provider, that provide for:

(1) Delivering to service recipients the following information and material, in written form, without recommendation:

(A) Information materials provided by the state on the right to make mental health treatment decisions, including the right to accept or refuse mental health treatment and the right to execute declarations for mental health treatment,

(B) Information on the policies of the provider with respect to implementation of the right to make mental health treatment decisions,

(C) A copy of the declaration for mental health treatment form, and

(D) The name of a person who can provide additional information concerning the forms for declarations for mental health treatment;

(2) Documenting in a prominent place in the service recipient's record whether there is an executed declaration for mental health treatment;

(3) Ensuring compliance by the provider with the law relating to declarations for mental health treatment; and

(4) Educating the staff and the community on issues relating to declarations for mental health treatment.

(b) A provider need not furnish a copy of a declaration for mental health treatment to a service recipient if the provider has reason to believe that the service recipient has received a copy of a declaration in the form set forth in this part within the preceding twelve (12) month period or has a validly executed declaration.

(c) The requirements of this section are in addition to any requirements that may be imposed under federal law and shall be interpreted in a manner consistent with federal law. Nothing in this section shall be interpreted to require a mental health service provider or any employee or agent of a mental health service provider to act in a manner inconsistent with federal law or contrary to the provider's religious or philosophical beliefs.

(d) No mental health service provider is subject to criminal prosecution or civil liability for failure to comply with this section.

## **CHAPTER 7**

### **SECURITY UNITS AND FORENSIC SERVICES**

#### **Part 1**

##### **General Provisions**

**33-7-101 [Similar to current 33-7-101]**

Any person with mental illness hospitalized under this chapter or held in a forensic services unit shall be examined as often as practicable but not less often than every three (3) months.

**33-7-102 [Similar to current 33-7-102]**

(a) Whenever a person is hospitalized or receives evaluation or treatment services under this chapter in connection with a criminal charge or conviction, wherever incarcerated, the person shall receive credit toward the satisfaction of the sentence for the time spent in the custody of the commissioner.

(b) When a person has been transferred from the Department of Correction to the custody of the commissioner, the person shall be released from the custody of the commissioner at the expiration of the sentence unless a judicial hospitalization order has been entered with respect to the person.

**33-7-103 [Current 33-7-103]**

Without regard to its wording, any court order of hospitalization in a hospital or unit of a hospital shall be considered in law as a transfer of the person to the custody of the commissioner.

## Part 2

## Security Units

33-7-201 [Current 33-7-201]

The commissioner shall operate in the state hospitals secure facilities, known as forensic services units, necessary for persons with mental illness who are eligible for admission to the units under this title.

33-7-202 [Similar to current 33-7-202]

(a) If the commissioner authorizes the transfer of a voluntary service recipient with mental illness to a forensic services unit, the chief officer of the receiving facility shall initiate commitment proceedings under Chapter 6, Part 5.

(b) In the proceedings the court shall determine, in addition to the findings required by Chapter 6, Part 5, whether the service recipient is substantially likely to injure such person or others if not treated in a forensic services unit and whether treatment in a forensic services unit is in the person's best interest.

33-7-203 [Current 33-7-203]

When a person in a forensic services unit no longer meets the standards under which the person was admitted to the unit, the chief officer shall cause the person to be discharged or to be returned to the hospital, division or facility from which the person was transferred or to be transferred to another appropriate facility or program.

## Part 3

## Forensic Services

33-7-301 [Similar to current 33-7-301]

(a) (1) When a defendant charged with a criminal offense is believed to be incompetent to stand trial, or there is a question about the defendant's mental capacity at the time of the commission of the crime, the criminal, circuit, or general sessions court judges may, upon their own motion or upon petition by the District Attorney General or by the attorney for the defendant and after hearing, order the defendant to be evaluated on an outpatient basis. The evaluation shall be done by the community mental health center or licensed private practitioner designated by the commissioner to serve the court or, if the evaluation cannot be made by the center or the private practitioner, on an outpatient basis by the state hospital or the state-supported hospital designated by the commissioner to serve the court. If and only if the outpatient evaluator concludes that further evaluation and treatment is needed, the court may order the defendant hospitalized, and if in a department facility, in the custody of the commissioner for not more than thirty (30) days for further evaluation and treatment for competence to stand trial subject to the availability of suitable accommodations.

(2) At any stage of a felony criminal proceeding, including a pre-trial hearing, trial, sentencing, or post-conviction proceeding, the state may move or petition the court to authorize the District Attorney General to designate a qualified expert to examine the defendant if the



defendant gives notice that the defendant intends to offer testimony about the defendant's mental condition, whether in support of a defense of insanity or for any other purpose. The court may authorize the District Attorney General to designate a qualified expert, who is willing to be appointed, to examine the defendant, if:

(A) An inpatient evaluator under subdivision (a)(1) notifies the court in a pre-trial proceeding that the type or extent of assessment required exceeds the expertise or resources available to the evaluator or exceeds the scope of analysis of the defendant's competence to stand trial, satisfaction of criteria for the insanity defense, or for commitment under Chapter 6, Part 5; or

(B) In any other type of felony criminal proceeding, the court determines that examination of the defendant by a qualified expert for the state is necessary to adjudicate fairly the matter before it.

(3) The amount and payment of expert fees shall be determined and paid by the Tennessee District Attorneys General Conference.

(b) (1) If the court determines on the basis of the mental health evaluation and other relevant evidence:

(A) That the defendant is incompetent to stand trial because of mental illness, or

(B) (i) That the defendant is competent to stand trial but that the failure to hospitalize would create a likelihood to cause the defendant serious harm by reason of mental illness, and

(ii) The defense attorney agrees with those findings, the District Attorney General or the attorney for the defense may petition the criminal court before which the case is pending or which would hear the case if the defendant were bound over to the grand jury to conduct proceedings for judicial hospitalization under Chapter 6, Part 5.

(2) Either party may demand a jury trial on the issues.

(3) The court is vested with jurisdiction to conduct the proceedings.

(4) In the proceedings the court shall determine, in addition to the findings required by Chapter 6, Part 5, whether the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and whether treatment is in the defendant's best interest.

(5) If the court enters an order of judicial hospitalization, the defendant shall be transferred to the custody of the commissioner, and if the court finds in addition that the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and that treatment in such a unit is in the defendant's best interests, the defendant shall be transferred to the custody of the commissioner at a forensic services unit designated by the commissioner.

(c) When a defendant admitted under subsection (b) has been hospitalized for six (6) months, and at six-month intervals thereafter, the chief officer of the hospital shall file a written report with the clerk of the court by whose order the defendant was confined and shall give a

copy of the report to the defendant, the defendant's attorney, the defendant's legal guardian or conservator, if any, and to the District Attorney General. The chief officer shall also send a copy of the report to the defendant's:

- (1) Parent;
- (2) Adult child; or
- (3) Spouse;

whichever is appropriate, but at least one (1) of the three (3). The report shall detail the chief officer's best judgment as to the defendant's prospects for recovery, the defendant's present condition, the time required for relevant kinds of recovery, and whether there is substantial probability that the defendant will become competent to stand trial in the foreseeable future.

33-7-302 [Similar to current 33-7-302]

When the chief officer determines that a defendant in a state hospital or treatment resource who is charged with a crime is restored to competence to stand trial, the chief officer shall give notice of that fact to the clerk of the court by whose order the defendant was confined and deliver the defendant to the sheriff of the county from which the defendant was admitted.

33-7-303 [Similar to current 33-7-303]

(a) When a person charged with a criminal offense is acquitted of the charge on a verdict of not guilty by reason of insanity at the time of the commission of the offense, the criminal court shall order the person detained for diagnosis and evaluation for a minimum of sixty (60) days and a maximum of ninety (90) days in a hospital or treatment resource.

(b) (1) Following diagnosis and evaluation, if certification is provided that the person is committable under Chapter 6, Part 5, the District Attorney General shall file a complaint in the criminal court for judicial commitment under Chapter 6, Part 5 and for an order requiring the person to participate in outpatient treatment under this subsection. If certification is not provided that the person is committable under Chapter 6, Part 5, the District Attorney General shall file a complaint in the criminal court for an order requiring the person to participate in outpatient treatment under this subsection.

(2) Notwithstanding any provision to the contrary in this title, the hospital or treatment resource shall not release the person without specific authorization of the court while the complaint is pending until the end of the ninety (90) day maximum detention ordered under subsection (a). The hospital or treatment resource shall release the person at the expiration of the ninety (90) day detention order unless the person has been ordered committed under Chapter 6, Part 5.

(3) If the court does not commit the person under Chapter 6, Part 5 and the court determines that the person's condition resulting from mental illness is likely to deteriorate rapidly to the point that the person will pose a substantial likelihood of serious harm under § 33-6-501 unless treatment is continued, the court may order the person to participate in outpatient treatment. Otherwise, the court may not order the person to participate in outpatient treatment. The obligation to participate in outpatient treatment continues until it is terminated by the court under subdivision (b)(5).

(4) If the court orders the person to participate in outpatient treatment and the person does not comply with the treatment plan, the qualified mental health professional shall notify the District Attorney General of the noncompliance, and the District Attorney General may move the criminal court to cite the person for civil or criminal contempt of court for the non-compliance and may file a complaint in the criminal court under the provisions of Chapter 6, Part 5. The qualified mental health professional shall file a report with the District Attorney General every six (6) months as to the person's continuing need for treatment.

(5) The court shall terminate the obligation to participate in outpatient treatment when it determines that the person is no longer subject to the obligation under subdivision (b)(3).

(6) The court is vested with jurisdiction to conduct proceedings authorized by this subsection.

(c) (1) Following the hearing conducted by the criminal court under Chapter 6, Part 5, if the court finds that the person meets the commitment standards under Chapter 6, Part 5, the court shall enter an order of judicial hospitalization and transfer the person to the custody of the commissioner subject to department rules governing release procedures.

(2) If the court further finds:

(A) That the person is substantially likely to injure such person or others if the person is not treated in a forensic services unit, and

(B) That treatment in such a unit is in the person's best interests, the person shall be transferred into the custody of the commissioner at a forensic services unit designated by the commissioner subject to the provisions of § 33-7-203.

(d) Either party may appeal a final adjudication under this section to the court of criminal appeals.

(e) The criminal court, in a trial before a jury in which the issue of insanity at the time of the commission of the offense is raised, shall instruct the jury before it begins deliberation as to the provisions of this section.

(f) The cost of treatment incurred as a result of the outpatient treatment and evaluation required in subsection (b) of this section shall be taxed as court costs.

#### Part 4

#### Mandatory Community-Based Services

33-7-401 [NEW]

IF AND ONLY IF

(1) A court with criminal jurisdiction holds a hearing to commit an adult with mental illness under § 33-7-301, AND

(2) The court finds on proof by clear and convincing evidence that the person is:

(A) Charged with a felony,

(B) Incompetent to stand trial,

(C) Not committable under § 33-6-502, and

(D) At risk of becoming committable, AND

(3) The department certifies to the court that there are funds available within the limits of the department's line item appropriation for services under this section for service to the person,

THEN

(4) The court may order the person to participate in community-based services under a plan approved and developed by the department to attain and maintain competence to stand trial and reduce the risk of becoming committable.

33-7-402 [NEW]

If upon completion of an evaluation of a person under § 33-7-301, the department determines that the person meets the standards in § 33-7-401, subdivisions (2)(B), (C), and (D),

and (3), the department shall attempt to develop a community-based services plan for the person for the purpose stated. The plan shall be for a maximum of two (2) years, and no person shall participate in such a plan for more than two (2) years.

33-7-403 [NEW; compare to current § 33-6-201(c)]

If a defendant contests a plan proposed by the department under § 33-7-401, the court shall hold a hearing within seven (7) days of receipt of the request to determine whether the plan is programmatically appropriate and legally permissible. The court shall either approve the plan or approve the plan as modified by the department to correct deficiencies found by the court.

33-7-404 [NEW]

A service provider for a person under § 33-7-401 shall assess the person's needs at least every six months and shall report to the court every six months on the person's progress toward the goal of the plan, prospects for recovery, the person's current condition, the time required for relevant kinds of recovery, and whether there is substantial probability that the person will become competent to stand trial in the foreseeable future. A service provider may request the court to release the person from the plan at any time.

33-7-405 [NEW]

If after two years of intensive services for competence to stand trial under § 33-7-401, the person has not made substantial progress to attain competence to stand trial, the service provider shall assess the person's needs and may terminate the service plan and recommend to the court that the person be referred to other mental health services as deemed appropriate. The service provider shall report its conclusion to the court before terminating services.

## CHAPTER 8

### SPECIAL PROVISIONS FOR CHILDREN

#### Part 1

#### Services to Children Generally

33-8-101 [NEW]

(a) Services for children who have serious emotional disturbance, mental illness, or developmental disabilities are governed by all of Title 33. The General Assembly finds that supporting families in their role as primary care givers for their children is more humane, efficient, and cost effective than placing children in state custody to obtain necessary services or otherwise placing children in settings outside their homes.

(b) For children covered by Title 33, the following service principles are fundamental to carrying out the responsibilities of service providers and advocates:

(1) Families and children are most responsible for determining their needs and should be included appropriately in planning and providing service and support;

(2) Families should receive the support they need to care for their children at home;

(3) Service providers and advocates should enable families and children to make good decisions concerning necessary, desirable, and appropriate services;

(4) Service providers should coordinate services among agencies likely to provide services and supports to children and families;

(5) Service providers and advocates should participate in development of interagency agreements under § 33-1-308 to assure consideration of the needs and problems of children and families; and

(6) Service providers should achieve smooth transitions in services and supports as children grow through various stages of development and become vested in making decisions for themselves, including the transition into adulthood.

#### 33-8-102 [NEW]

(a) The department shall promote effective advocacy for services and supports for all children with serious emotional disturbance, mental illness, or developmental disabilities. The department's responsibilities for children shall include but not be limited to:

(1) Promoting collaboration among care givers and service providers and equitable involvement of care givers in service plan development;

(2) Case finding after the department has adopted rules regarding service and support to children;

(3) Determining eligibility;

(4) Providing basic service standards;

(5) Facilitating the interdepartmental planning process for children through the statewide and regional planning and policy councils;

(6) Initiating meetings or other processes to develop local interagency agreements as needs and problems are identified by service providers, advocates, or families;

(7) Assisting children and their families to gain access to the system of services and supports;

(8) Defining and listing an array of services and supports; and

(9) Assisting youth who have been in the public system of care with transition to adult services.

(b) The department shall promote effective advocacy for services and supports for all children with serious emotional disturbance, mental illness, or developmental disabilities.

## 33-8-103 [NEW]

Children with serious emotional disturbance are a priority population for the department's mental health services and supports. Children with developmental disabilities are a priority population for the department's developmental disabilities services and supports. The department shall set the array of services and supports for these priority populations annually in its plan. The state will fund and the department will maintain the array of services and supports for persons in this priority population. Consistent with applicable eligibility requirements, the state may provide the funding for such services through the Medicaid program or any waiver granted under the Medicaid program, specifically including TennCare, other public funds, or private funds.

## 33-8-104 [NEW]

Children who are emancipated by marriage, court order, or in any other way recognized by law in Tennessee have all the rights and responsibilities of adults under Title 33 except to the extent those rights are restricted by court order. The parent of an emancipated child shall be treated as the parent of an adult under all provisions of Title 33 that give parents rights or responsibilities with respect to the child.

## 33-8-105 [NEW]

Mental health and developmental disabilities service providers shall prepare interagency plans to assure that seventeen (17) year old persons in state custody who will continue to need services and supports in adulthood can make a smooth transition to adult services. The plan should take into account the requirements of other state and federal laws with respect to service. If necessary to avoid delays in service during the transition into adult services, plans shall be prepared before the persons become seventeen (17).

## 33-8-106 [NEW]

Service providers shall inform the department of needs or problems of children and families that may be addressed by local interagency agreements with the goals set in 33-1-308 for state interagency agreements. Service providers shall participate in processes initiated by the department or others to address such needs or problems.

## Part 2

## Special Provisions for Mental Health Services to Children

## 33-8-201 [NEW]

A child who has alcohol dependence, drug dependence, or developmental disability may only receive mental health service or support from the mental health service division if the condition is concurrent with another serious emotional disturbance or mental illness.

## 33-8-202 [NEW; derived from current §§ 33-6-101 and 33-6-102]

(a) If a child with serious emotional disturbance or mental illness is sixteen (16) years of age or older, the child has the same rights as an adult with respect to outpatient and inpatient mental health treatment, medication decisions, confidential information, and participation in

conflict resolution procedures under this title except as provided in Part 3 of this chapter or as otherwise expressly provided in this title. If the child's parent, legal guardian, legal custodian, or treating professional believes that the child's decision to terminate treatment, other than a request for discharge under Chapter 6, Part 2 of this title, will have severe adverse effects on the child, the conflict resolution procedures under Chapter 2, Part 6 of this title shall be used.

(b) An outpatient facility or professional may provide treatment and rehabilitation without obtaining the consent of the child's parent, legal guardian, or legal custodian.

#### 33-8-203 [NEW]

Parents, legal custodians, and legal guardians shall participate in mandatory outpatient treatment discharge planning and do what is necessary to carry out the child's plan.

### Part 3

#### Special Medical Procedure Rules

#### 33-8-301 [Derived from current § 33-3-201(a)]

No person or facility may administer electroconvulsive therapy or other convulsive therapy to a child except as authorized under this part under §§ 33-8-302 and 33-8-303 or under §§ 33-8-305--33-8-313.

#### 33-8-302 [NEW]

#### IF AND ONLY IF

(1) A child has mania or severe depression, AND

(2) (A) All other accepted methods of therapy have been exhausted, OR

(B) Electroconvulsive or other convulsive therapy is necessary to save the child's life due to potential suicide, or to prevent irreparable injury resulting from conditions such as starvation, dehydration, or physical exhaustion bordering on serious collapse to the extent such conditions are life threatening, AND

(3) The service provider to perform the therapy has convened a multi-disciplinary review team of at least five persons, at least one of whom is independent of the service provider, AND

(4) The multi-disciplinary review team has approved the electroconvulsive or other convulsive therapy, AND

(5) An American Board of Psychiatry and Neurology certified psychiatrist, who is child and adolescent certified, approves the therapy,

#### THEN

(6) The approved convulsive therapy may be necessary for the child for purposes of this part.



## 33-8-303 [NEW]

## IF AND ONLY IF

- (1) A child is fourteen (14) years of age or older, AND
- (2) The approved convulsive therapy may be necessary for the child as determined under § 33-8-302, AND
- (3) A second American Board of Psychiatry and Neurology certified psychiatrist approves the procedure, AND
- (4) The child does not object to the electroconvulsive or other convulsive therapy after being informed of the proposed therapy and alternatives, AND
- (5) At least one parent who has custody of the child or the child's legal guardian consents, AND
- (6) No parent objects to the therapy,

## THEN

- (7) The child may be treated with the approved convulsive therapy under authority of this section.

## 33-8-304 [NEW]

If a child is in state custody and a convulsive therapy may be necessary for the child as determined under § 33-8-302, the therapy shall not be performed unless the Commissioner of the Department of Children's Services obtains authority under §§ 33-8-305--33-8-313. A child in state custody may not be provided convulsive therapy under § 33-8-309.

## 33-8-305 [Derived from current § 33-3-201(a)]

No mental health professional, hospital, treatment resource, or other person or facility may administer electroconvulsive therapy or other form of convulsive therapy to any person under the age of eighteen (18) years under §§ 33-8-305--33-8-313 except (1) upon prior written authorization by a court based upon a hearing at which it is shown that the approved convulsive therapy may be necessary for the child as determined under § 33-8-302 and is necessary in light of all evidence presented at the hearing or (2) emergency treatment under § 33-8-309. In all cases under §§ 33-8-305--33-8-313 the court shall appoint for the child a guardian *ad litem* who is not the child's attorney.

## 33-8-306 [Similar to current § 33-3-201(b)]

If proceedings for the child's commitment under Chapter 6, Part 5 are pending, the hearing to determine the necessity of administering convulsive therapy may be held only after adequate written notice has been given to the child, the child's legal guardian, and the child's attorney informing them of the nature of the therapy sought and the facts upon which the claim is based that such therapy is necessary for the child's health or safety. The hearing may either

be consolidated with the hearing for the child's commitment under Chapter 6, Part 5, or may be convened at another time.

33-8-307 [Derived from current § 33-3-201(c)]

If no proceedings for the child's commitment under Chapter 6, Part 5 are pending, the hearing to determine the necessity of administering electroconvulsive or other convulsive therapy shall be convened in the juvenile court where the child resides, was committed to state custody, or may be found upon petition of the child, the child's parent, the legal guardian, a mental health professional, hospital, or treatment resource seeking authorization to administer such therapy. The petition shall be verified and shall state the nature of the therapy for which authorization is sought, and the facts upon which the petitioner relies to support the claim that such therapy is necessary for the child's health or safety. The court shall, upon receipt of the petition, appoint counsel to defend against the petition, and the petition shall be served personally upon both the child and the child's attorney.

33-8-308 [Similar to current § 33-3-201(d)]

Whenever authorization is sought for the administration to a child of electroconvulsive or other convulsive therapy, the court shall appoint an independent psychiatrist who shall receive reimbursement in an amount fixed by the court. No electroconvulsive or other convulsive therapy may be authorized for a child except upon the testimony of an independent psychiatrist, who is child and adolescent certified by the American Board of Psychiatry and Neurology, that the psychiatrist has examined the child and is of the opinion that such therapy is necessary for the child's health or safety.

33-8-309 [Similar to current § 33-3-201(g)(1) and (2)]

(a) Electroconvulsive or other convulsive therapy may be initiated prior to a court hearing under §§ 33-8-305--33-8-313, if the petitioner files a petition with the court having jurisdiction of the child's commitment under Chapter 6, Part 5, if such a proceeding is pending, or otherwise files a petition in the juvenile court where the child resides, was committed to state custody, or may be found.

(b) The petition shall be verified by the mental health professional, hospital or treatment resource seeking authorization to administer the therapy and shall state the nature of the therapy for which authorization is sought, and the facts upon which the petitioner relies to support the claim that it has been determined under § 33-8-302 that the convulsive therapy may be necessary for the child.

(c) Attached to the petition shall be an affidavit from a child psychiatrist, who shall be child and adolescent certified by the American Board of Psychiatry and Neurology, stating that:

(1) It has been determined under § 33-8-302 that the convulsive therapy may be necessary for the child, and

(2) There is insufficient time to complete the procedure provided by §§ 33-8-305--33-8-313, and therefore treatment prior to a court hearing is necessary.

The affidavit shall provide the specific factual, medical and clinical basis supporting the requirements of this section.

(d) The child psychiatrist shall have personally examined the child within twenty-four (24) hours of the filing of the petition.

(e) The child psychiatrist shall not be in a professional practice or association with the attending physician, nor have any direct financial interest in any private hospital or treatment resource in which the child is to be detained or receive therapy.

(f) If the petition and affidavit have been filed in conformity with this section, electroconvulsive or other convulsive therapy may be initiated. Electroconvulsive or other convulsive therapy shall be discontinued immediately when any of the conditions required under § 33-8-302(1) and (2) and § 33-8-303(1) that justified the therapy are no longer true.

33-8-310 [Derived from current § 33-3-201(d) and (g)(3)]

(a) The court hearing upon a petition under § 33-8-305--313 shall be held within seven (7) calendar days of the filing of the petition. Upon the filing of the petition, the court shall appoint counsel to represent the child at such hearings, unless the child already has an attorney due to a pending commitment under Chapter 6, Part 5. The petition shall be served personally upon both the child and the child's attorney.

(b) The child's attorney shall not in any case be a person who has previously advised the parties seeking authorization to administer electroconvulsive therapy or other convulsive therapy, nor shall the attorney be a person who has previously advised the child's parents, the parent's business, the child's legal guardian, or the legal guardian's business.

(c) The court-appointed independent psychiatrist or the child psychiatrist whose affidavit accompanied a petition filed under § 33-3-309 shall be a witness at the hearing. The child psychiatrist's testimony may be used in place of a court-appointed independent psychiatrist. Such psychiatrist's testimony shall not be regarded as conclusive, and the court shall consider any other evidence, including other expert testimony, offered in opposition to the authorization of such therapy.

33-8-311 [Similar to current § 33-3-201(g)(4), (5)]

(a) At the hearing the court shall determine:

(1) If therapy was administered under § 33-8-309, whether retrospectively all of the standards for initiating therapy under § 33-8-309 prior to a court hearing were fully complied with, and if not, which standards were not met; and

(2) Whether prospectively electroconvulsive or other convulsive therapy is necessary for the child's health or safety.

(b) Nothing in §§ 33-8-305--33-8-313 shall be construed to modify or alter §§ 33-8-315 or 33-8-316.

33-8-312 [Derived from current § 33-3-201(i)]

Under §§ 33-8-305--33-8-313, if the child is indigent and is not in the custody of the Department of Children's Services, the Department of Mental Health and Developmental Disabilities shall reimburse the attorney for the petitioner, the attorney and the guardian *ad litem* appointed by the court for the child, and the psychiatrist who testifies at the hearing, whether the board-certified child psychiatrist under § 33-8-309 or the court-appointed independent psychiatrist under § 33-8-308, in an amount fixed by the court. The Department of Mental Health and Developmental Disabilities shall pay all court costs under §§ 33-8-305--33-8-313 if the child is indigent and is not in the custody of the Department of Children's Services.

33-8-313 [Current § 33-3-201(e)]

Any decision of the court under §§ 33-8-305--33-8-313 shall be reviewable de novo upon expedited appeal to the circuit court, and the decision of the court from which an appeal is taken shall be stayed pending disposition of the appeal in circuit court.

33-8-314 [NEW]

The department shall report annually to the statewide planning and policy council on the use of electroconvulsive and other convulsive therapies.

33-8-315 [Derived from current § 33-3-201(f)]

Lobotomies for intervention or alteration of a mental, emotional or behavioral disorder shall not be performed on children, and the courts of this state are prohibited from ordering or authorizing the performance of any such procedure upon any child.

33-8-316 [Current § 33-3-201(h)]

A child may not waive any right created by this part, nor may any such right be waived by any other person acting on the child's behalf.

## CHAPTER 9

### INTERSTATE PROVISIONS

#### Part 1

#### Extradition

33-9-101 [Current section of same number]

(a) "Flight" and "fled" as used in this part mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings mentioned may have been instituted and are still pending, with the effect of avoiding, impounding, or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if the person then was under detention by law as a person with mental illness and subject to detention.

(b) The word "state" whenever used in this part shall include states, territories, districts and insular and other possessions of the United States.

(c) As applied to a request to return any person under this part to or from the District of Columbia, the words "Executive Authority," "Governor" and "Chief Magistrate," respectively, shall include a Justice of the Supreme Court of the District of Columbia and other authority.

33-9-102 [Current section of same number]

A person alleged to be mentally ill found in this State, who has fled from another state, in which at the time of the person's flight:

(1) The person was under detention by law in a facility as a mentally ill person;

(2) The person had been previously determined by legal proceedings to be of mentally ill, the finding being unreversed and in full force and effect, and the control of the person having been acquired by a court of competent jurisdiction of the state from which the person fled; or

(3) The person was subject to detention in such state, being then the person's legal domicile (personal service of process having been made) based on legal proceedings pending there to have the person declared mentally ill;

Shall, on demand of the executive authority of the state from which the person fled, be presented for return.

33-9-103 [Current section of same number]

Whenever the executive authority of any state demands of the executive authority of this state any fugitive under § 33-9-102, and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the Governor or chief magistrate of

the state from which the person so charged has fled, with an affidavit made before a proper officer showing the person to be a fugitive, it shall be the duty of the executive authority of this state to cause the person to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making the demand, or to the agent of the authority appointed to receive the fugitive and to deliver the fugitive to the agent when the person appears.

33-9-104 [Current section of same number]

If no such agent appears within thirty (30) days from the time of the apprehension, the fugitive may be discharged.

33-9-105 [Current section of same number]

All costs and expenses incurred in apprehending, securing, maintaining, and transmitting the fugitive to the state making the demand, shall be paid by such state.

33-9-106 [Current section of same number]

An appointed agent who receives the fugitive into custody shall be empowered to transmit the person to the state from which the person fled.

33-9-107 [Current section of same number]

The executive authority is vested with the power, on the application of any person interested, to demand the return to this state of any fugitive under this part.

33-9-108 [Current section of same number]

Any proceedings under this part shall begin within one (1) year after the flight referred to in this part.

33-9-109 [Current section of same number]

This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

## Part 2

### Interstate Compact on Mental Health

33-9-201 [Current section of same number]

The Interstate Compact on Mental Health is enacted into law and entered into by this state with all other states legally joining the compact in the form substantially as follows:

The contracting states solemnly agree that:

## ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

## ARTICLE II

As used in this compact:

(a) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(b) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(c) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(d) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(e) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(f) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(g) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

## ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based

upon clinical determinations indicating that the care and treatment of the patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if such authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in the receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

#### ARTICLE V



Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two (2) or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

#### ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the

sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

#### ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, such person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

## ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state, either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have the power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

## ARTICLE XI

The duly constituted administrative authorities of any two (2) or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

## ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

## ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawals shall take effect one (1) year after notice thereof has been communicated officially and in writing to the Governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to such state or sent out of such state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

## ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall

be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

33-9-202 [Current section of same number]

The commissioner or the commissioner's designee shall be the compact administrator and, acting jointly with like officers of other party states, shall have the power to adopt rules to carry out more effectively the terms of the compact. The compact administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact and any supplementary agreement entered into by this State.

33-9-203 [Current section of same number]

The compact administrator may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. If such supplementary agreements involve the use of a facility or facility of this state or the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with rendering the service.

33-9-204 [Current section of same number]

The compact administrator, subject to the approval of the Commissioner of Finance and Administration, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

33-9-205 [Current section of same number]

The compact administrator shall consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from a facility in this state to a facility in another party state, take no final action without approval of the court which committed the proposed transferee.

33-9-206 [Current section of same number]

Duly authorized copies of this part shall, upon its approval, be transmitted by the Secretary of State to the Governor of each state, the Attorney General and the Administrator of General Services of the United States, and the council of state governments.

33-9-207 [NEW]

The compact administrator shall not agree to accept any person with mental illness, serious emotional disturbance, alcohol dependence, drug dependence, or developmental disability who does not meet the applicable standards for service under Title 33 other than any requirement of being a Tennessee resident.

SECTION 2. Tennessee Code Annotated, § 4-3-1601, is amended by deleting it in its entirety and substituting the following:

There is created the Department of Mental Health and Developmental Disabilities. The general functions of the department are to coordinate, set standards for, plan for, monitor, and promote the development and provision of services and supports to meet the needs of persons with mental illness, serious emotional disturbance, or developmental disabilities through the public and private sectors in this state as set out in Title 33.

SECTION 3. Tennessee Code Annotated, § 4-3-1602(a), is amended by deleting it in its entirety and substituting the following:

The Department of Mental Health and Developmental Disabilities shall be in the charge of a commissioner, who shall be appointed by the Governor in the same manner as are other commissioners and who shall have the same official status as other commissioners.

SECTION 4. Tennessee Code Annotated, § 4-3-1602(c), is amended by deleting the words "or mental retardation" and by substituting the words and punctuation marks ", serious emotional disturbance, or developmental disabilities" and is further amended by deleting the words and punctuation "human development, mental retardation" and by substituting the words and punctuation "human development, developmental disabilities,".

SECTION 5. Tennessee Code Annotated, § 4-3-1603, is amended by deleting it in its entirety and substituting the following:

(a) The Department of Mental Health and Developmental Disabilities has exclusive jurisdiction and control over the mental health and developmental disabilities facilities of the state, regardless of the names by which the facilities are known.

(b) The department, through its appropriate officials, has the duty and power to provide the best possible care for persons with mental illness, serious emotional disturbance, or developmental disabilities in the state by improving existing facilities, by the development of future facilities and programs, and by the adoption of a preventive program for mental illness, serious emotional disturbance, and developmental disabilities, all as provided in Title 33.

SECTION 6. Tennessee Code Annotated is amended by deleting, wherever it appears, the phrase "Department of Mental Health and Mental Retardation," and by substituting instead the phrase "Department of Mental Health and Developmental Disabilities."

SECTION 7. Tennessee Code Annotated, § 33-3-203, is amended by transferring it to Title 37, Chapter 1, Part 1, and by deleting it in its entirety, and by substituting the following:

37-1-175

IF AND ONLY IF

- (1) A child is the subject of a proceeding under Title 37, Chapter 1, AND
- (2) The child is mentally ill, AND

(3) The child needs care, training, or treatment because of the mental illness,  
AND

(4) All available less drastic alternatives to committing the child to the temporary legal custody of the department are unsuitable to meet the child's needs for care, training, or treatment for the mental illness,

THEN

(5) A juvenile court may commit the child to the temporary legal custody of the department in proceedings conducted in conformity with §§ 33-3-602--33-3-608, 33-3-610--33-3-620, and 33-6-505--33-6-508, to meet the child's needs for care, training, or treatment for the mental illness.

37-1-176

IF

(1) A juvenile court commits a child to the temporary legal custody of the department under § 37-1-175,

THEN

(2) The department shall provide the necessary care, training, or treatment for the child in the least drastic alternative way which is available and suitable to meet the child's needs,

AND

(3) Community mental health centers and community programs which receive grants or contracts from the department to provide such services to children shall, at the direction of the department, provide the community-based services necessary to meet the child's needs for treatment in the least drastic alternative to hospitalization, AND

## (4) IF AND ONLY IF

(A) Placing the child in inpatient care in a hospital or treatment resource is the least drastic alternative way which is available to the department and is suitable to meet the child's needs,

THEN

(B) The department shall apply for the child's admission to a hospital or treatment resource under Title 33, Chapter 6, Part 2 or 4 or shall initiate proceedings under Title 33, Chapter 6, Part 5.

## 37-1-177

If an evaluation under § 37-1-128(d) shows that a child may be subject to commitment to the temporary legal custody of the department, the juvenile court may direct any person it determines to be suitable for the purpose to file a complaint under § 37-1-175.

## 37-1-178

If a child no longer meets the standards under which the child was hospitalized or admitted to a treatment resource under § 37-1-176, subdivision (4), the child shall be discharged under Chapter 6, Part 7, and the child shall remain in the custody of the department until the department's custody is terminated under §§ 37-1-179--37-1-180.

## 37-1-179

If a child no longer meets the standards under which the child was committed to the custody of the department under § 37-1-175, the department shall make a full report of the status of the child to the committing court. If the committing court objects to the termination of the department's custody, the court shall set a hearing on the matter within fifteen (15) days of the date of the report, with such hearing to be held at the earliest possible date. The department shall retain custody pending the outcome of the hearing. If the court does not set a hearing, the department's custody terminates at the end of the fifteenth day after the date of the report unless the court has approved an earlier termination.

## 37-1-180

If the court sets a hearing to review the status of the child under § 37-1-179, the child shall have the same rights as in the original commitment proceeding under §§ 33-3-605, 33-3-608, 33-3-610--33-3-616, and 33-3-620. If and only if the court finds on the basis of clear, unequivocal, and convincing evidence that the child is subject to commitment to the custody of the department under § 37-1-175, the court may order that the child remain in the temporary legal custody of the department. If the court does not so find, the department's custody terminates at the end of the hearing.

## 37-1-181

Proceedings under §§ 37-1-175--37-1-181 may be held only by judges who are lawyers or by referees.

SECTION 8. The Tennessee Code Commission is directed to correct or delete, as appropriate, references in other titles of the Code to provisions affected by this act as follows:

- A. References to § 33-6-103 shall be changed to read "Title 33, Chapter 6, Part 4";
- B. References to "pose a likelihood of serious harm as defined in § 33-6-104" shall be changed to "pose a likelihood of serious harm as defined in § 33-6-501";
- C. References to § 33-6-104 as a whole shall be changed to read "Title 33, Chapter 6, Part 5";
- E. References to § 33-6-101 shall be changed to read "§ 33-6-201";
- F. References to any part of § 33-1-101 by subdivision shall be changed to read "§ 33-1-101";
- G. References to § 33-3-203 shall be changed to read "§ 37-1-175";
- H. References to § 33-5-305 shall be changed to read "§ 33-5-402";
- I. References to § 33-5-105 shall be changed to read "§ 33-2-417";
- J. References to § 33-5-306 shall be changed to read "§ 33-5-406";
- K. References to § 33-1-209(c) shall be changed to read "§ 33-2-1202";
- L. References to Title 33, Chapter 2, Part 5 shall be changed to read "Title 33, Chapter 2, Part 4";
- M. References to § 33-2-502 shall be changed to read "§ 33-5-402"; and
- N. References to § 33-4-102 shall be changed to read "§ 33-2-1202".

SECTION 9. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

SECTION 10. Tennessee Code Annotated, Title 33, Chapter 3, Part 1, is amended by adding the following language as a new appropriately designated section:

Section \_\_\_\_\_. A licensee or provider under this title may not discourage or preclude a service recipient from exercising the right to religious expression and shall inform each service recipient in a residential environment of this right. A licensee or provider, or a provider of religious service may provide transportation for a service recipient under this section.

SECTION 11. If any provision of this act or the application of it to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.



SECTION 12. For the purposes of gathering necessary information for rule-making and planning and for adopting rules to implement Section 1 of this act in accordance with Tennessee Code Annotated, Title 4, Chapter 5, this act shall take effect upon becoming a law, the public welfare requiring it. Sections 2 through 10 of this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect on March 1, 2001.

**PASSED: June 9, 2000**

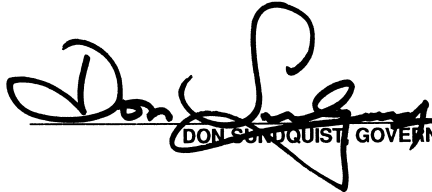


JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES



JOHN S. WILDER  
SPEAKER OF THE SENATE

**APPROVED this 23<sup>d</sup> day of June 2000**



DON SUNDQUIST, GOVERNOR